



K1F  
730  
L67  
1888

**CORNELL UNIVERSITY LAW LIBRARY**

**The Moak Collection**

**PURCHASED FOR**

**The School of Law of Cornell University**

**And Presented February 14, 1893**

**IN MEMORY OF**

**JUDGE DOUGLASS BOARDMAN**

FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**

Cornell University Library

**KF 730.L67 1888**

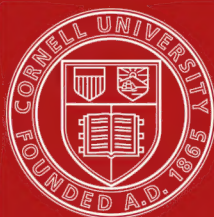
v.3

**A practical treatise on the law of trust**



3 1924 018 816 128

law



## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.







A  
PRACTICAL TREATISE  
ON  
THE LAW OF TRUSTS.

BY  
(THE LATE)  
THOMAS LEWIN, ESQ.

From the Eighth English Edition.

BY  
FREDERICK ALBERT LEWIN,  
OF LINCOLN'S INN, ESQUIRE, BARRISTER-AT-LAW, AND LATE FELLOW  
OF CAIUS COLLEGE, CAMBRIDGE.

WITH AMERICAN NOTES

ALSO A SUPPLEMENTARY CHAPTER ON

TRUSTS FOR ACCUMULATION.

By WILLIAM C. SCOTT, Esq.,  
OF THE PHILADELPHIA BAR.

VOLUME III.

---

PHILADELPHIA :  
THE BLACKSTONE PUBLISHING COMPANY.  
1888.

M9345

Entered according to the Acts of Congress, in the year 1888, by the BLACK-  
STONE PUBLISHING COMPANY, in the office of the Librarian of  
Congress, at Washington, D. C.

#### **NOTE.**

---

We suggest to our patrons that, to facilitate the labor of the Judges and Reporters, they cite the TOP PAGING of books of our SERIES, and add [**TEXT BOOK SERIES.**]*—Editor.*



THE RIGHTS OF A CESTUI QUE TRUST IN PREVENTION  
OF BREACH OF TRUST.

As the estate of the *cestui que trust* depends for its continuance upon the faith and integrity of the trustee, it is reasonable that the *cestui que trust*, whose interest is thus materially concerned, should be allowed by all practicable means to secure himself against the occurrence of any act of misconduct. We shall, therefore, next consider the rights of the *cestui que trust* that are calculated to arm him with this protection.

*First.*—The *cestui que trust* is entitled to have the custody and administration of the estate confided to the care both of *proper persons* and of a *proper number* of such persons.

*Cestui que trust* entitled to appointment of proper trustees. Trustee dying in testators lifetime.

1. Thus, if the trustee originally appointed by a will happen to die in the testator's lifetime, the *cestui que trust*, where such a course would be for his interest, may have the property better secured by a conveyance to an express trustee for himself; and where a testator did not appoint a trustee at all, but only appointed executors, the Court asserted an inherent jurisdiction of its own to appoint trustees to take charge of the fund (u).

2. So where the original number of trustees has become reduced by deaths, the *cestui que trust* may restore the property to its original security by calling for the appointment of new trustees in the place of the trustees deceased (v); and even a *cestui que trust* in remainder may take proceedings to have the proper number of trustees filled up (w)<sup>1</sup>, and under the new practice the Court has appointed new trustees upon an action by infant *cestuis que trust* without any \*state- [ \* 847 ] ment of claim upon an admission in the statement of

Death of trustees after having acted.

(u) *Dodkin v. Brunt*, 6 L. R. Eq. 580; [and see Appendix, *post*, sect. 9 of the Trustee Extension Act, and the cases cited in the note thereto.

(v) *Buchanan v. Hamilton*, 5 Ves. 722; *Hibbard v. Lamb*, Amb. 309.

(w) *Finlay v. Howard*, 2 Dru. & War. 490.

<sup>1</sup> *Green v. Borland*, 4 Met. 339; *Dixon v. Homer*, 12 Cush. 41; *DePeyster v. Clendinning*, 8 Paige 296.



defence by the sole trustee that she was willing to retire (x).

Trustee refusing to act, becoming incapable, or misconducting himself, &c.

3. If a trustee refuse to act (y), or become so circumstanced that he cannot effectually execute the office (as where a trustee goes *abroad* to reside permanently (z)),<sup>1</sup> or the trustees of a chapel entertain opinions *contrary to the founder's intention* (a),<sup>2</sup> or if a trustee of money become *bankrupt* (b), or if a trustee *misconduct* himself in any manner (c),<sup>3</sup> (as by dealing with the trust property for his own *personal advancement* (d)),<sup>4</sup> by suffering a co-trustee to commit a *breach of trust* (e), or by *absconding* on a charge of forgery (f); in these and the

(x) *Mooney v. Summerlin*, W. N. 1876, p. 90.

(y) *Maggeridge v. Grey*, Nels. 42; *Travell v. Danvers*, Rep. t. Finch. 380; *Wood v. Stane*, 8 Price, 613; *Anon.* 4 Ir. Eq. Rep. 700.

(z) *O'Reilly v. Alderson*, 8 Hare, 101; *Re Ledwich*, 6 Ir. Eq. Rep. 561; *Commissioners of Charitable Donations v. Archbold*, 11 Ir. Eq. Rep. 187.

(a) *Attorney-General v. Pearson*, 7 Sim. 290, see 309; *Attorney-General v. Shore*, Ib. 309, see 317.

(b) *Bainbrigge v. Blair*, 1 Beav. 495; *Re Roche*, 1 Conn. & Laws. 306; *Commissioners of Charitable Donations v. Archbold*, 11 Ir. Eq. Rep. 187; *Harris v. Harris* (No. 1), 29 Beav. 107; *Re Barker's Trusts*, 1 Ch. D. 43, in which case M.R. observed: "It is the duty of the Court to remove a bankrupt who has trust money to receive or deal with, so that he can misappropriate it. There may be exceptions under special circumstances to that general rule. And it may also be, that where a trustee has no money to receive, he ought not to be removed merely because he has become bankrupt, but I consider the general rule to be as I have stated. The reason is obvious. A necessitous man is more likely to be tempted to misappropriate than one who is wealthy; and, besides, a man who has not shown prudence in managing his own affairs, is not likely to be successful in managing those of other people." An exception to the general rule was made in *Re Bridgman*, 1 Dr. & Sm. 164, where a trustee became bankrupt, but without any imputation on his moral character, and had been honorably unfortunate, and but for an accident would have been solvent, and had been treated by all parties since his bankruptcy as a proper person to manage the trust. If the trustee compound with his creditors, the same rule applies as in bankruptcy, for the *cestuis que trust* have equally a right to have the administration of the trust estate committed to responsible persons; [*Re Adams' Trust*, 12 Ch. D. 634; and see *Re Hopkins*, 19 Ch. D. 61.]

(c) *Mayor of Coventry v. Attorney-General*, 7 B. P. C. 235; *Buckeridge v. Glasse*, Cr. & Ph. 126, see 131.

(d) *Ex parte Phelps*, 9 Mod. 357.

(e) *Ex parte Reynolds*, 5 Ves. 707.

(f) *Millard v. Eyre*, 2 Ves. jun. 94.

<sup>1</sup> *Ketchum v. Mobile & Ohio R. R. Co.* 2 Woods. 532; *Trust Co. v. Hughes*, 11 Hun. 130; *Dorsey v. Thompson*, 37 Md. 25.

<sup>2</sup> *Rose v. Crockett*, 14 La. An. 811.

<sup>3</sup> *Thompson v. Thompson*, 2 B. Mon. 161.

<sup>4</sup> *Clemens v. Caldwell*, 7 B. Mon. 171.

like cases the *cestui que trust* may have the old trustee removed, and a new trustee appointed in his room.<sup>1</sup> And in such a suit it will not be scandalous or impertinent to challenge a trustee for misconduct, or to impute to him any corrupt or improper motive in the execution of the trust, or to allege that his behaviour is the vindictive consequence of some act on the part of the *cestui que trust*, or of some change in his situation; but it will be impertinent, and may be scandalous, to state circumstances of *general malice* or personal hostility (*g*).<sup>2</sup> And if the old trustee be removed on the ground of *misconduct*, he must bear the expense of \* the [\* 848] appointment of a new trustee, as an act necessitated by himself (*h*).

But where the instrument creating the trust contemplates the possibility of a single trustee being appointed to act alone, and the power of appointing new trustees is given to the trustees or trustee for the time being, it is not a breach of trust in the last surviving trustee to refuse to appoint another trustee to act with himself, and an action to compel him to do so, if not sustainable on other grounds, will be dismissed with costs; *Peacock v. Colling*, 33 W. R. 528.

[4. The jurisdiction of a Court of equity to remove a trustee is ancillary to its principal duty, to see that the trusts are properly executed. And therefore, though charges of misconduct are not made out, or are greatly exaggerated, the Court may, if satisfied that the continuance of the trustee would prevent the trusts being properly executed, remove the trustee, as the trustees exist for the benefit of those to whom the creator of the trust has given the trust estate (*i*).]

[Trustee removed where it is to the advantage of the trust.]

5. If the trust property be under administration by the Court, and the surviving trustee dies, the appointment of other trustees is not matter of course, but rests in the discretion of the Court, having regard to the state of the trust at the time (*k*); and if liberty has been given by a former order to apply at chambers, and the parties present a petition instead of applying at Cham-

Trust property under administration by the Court.

(*g*) *Earl of Portsmouth v. Fellows*, 5 Mad. 450.

(*h*) *Ex parte Greenhouse*, 1 Mad. 92.

[(*i*) *Letterstedt v. Broers*, 9 App. Cas. 371; 386.]

(*k*) *Ryan v. Stockdale*, W. N. 1875, p. 106.

<sup>1</sup> As for example where he loans funds on personal security. *Johnson v. Simpson*, 9 Barr. 416; or where a man who is trustee for his wife, deserts her or abuses her, *Abernathy v. Abernathy*, 8 Fla. 243; *Boaz v. Boaz*, 36 Ala. 334, or where a trustee becomes an habitual drunkard, *Bayles v. Staats*, 1 Hal. St. Ch. 513.

<sup>2</sup> *Parsons v. Jones*, 26 Ga. 644.

bers for the appointment of new trustees, the petitioners will be disallowed their costs (l).

Trustees  
required to  
be "inhabi-  
tants."

6. If the settlement require the trustees of a charity to be *inhabitants of a particular place*, it is irregular to appoint persons trustees who do not answer that description, provided at the time of the election there be any inhabitants proper to be trustees (m). But where it has been the custom to appoint trustees not being inhabitants, the Court will not *remove* the existing trustees, though it will take care that the founder's directions shall be better observed for the future (n); and generally, though trustees may have been appointed irregularly in the first instance, their removal cannot be demanded after acquiescence for a great number of years (o). And in the selection of trustees of charities the Court inquires whether the parties proposed are *proper persons*, not whether they are the *most proper* that could be found (p).

[7. Where the administration of a charity had been committed by the settlor to the lord provost and town council of Edinburgh and the ministers of the burgh, [\*849] but for a long period the \* administration had been solely in the hands of the provost and council, it was held that, notwithstanding the length of time during which a contrary practice had prevailed, the ministers must in future be admitted as joint administrators of the charity (q).]

Trustee not  
to be dis-  
missed from  
caprice.

8. The Court will not dismiss a trustee for the mere *caprice* of the *cestui que trust* without any reasonable cause shown (r)<sup>1</sup>, or because the trustee has *refused* from *honest motives* to exercise a *power* at the request of a tenant for life (s), or because a *dissension* has arisen between the trustee and one of the *cestuis que*

(l) *Bund v. Green*, W. N. 1875, p. 213.

(m) *Attorney-General v. Cowper*, 1 B. C. C. 439. As to the force of the word "residence," see *Blackwell v. England*, 3 Jur. N. S. 1302; *Attenborough v. Thompson*, 2 H. & N. 559.

(n) *Attorney-General v. Stamford*, 1 Ph. 737; *Attorney-General v. Clifton*, 32 Beav. 596; *Attorney-General v. Daugars*, 33 Beav. 621.

(o) *Attorney-General v. Cuming*, 2 Y. & C. C. C. 139, see 150.

(p) *Lancaster Charities*, 7 Jur. N. S. 96.

[(q) *The Lord Provost, &c. of Edinburgh v. The Lord Advocate*, 4 App. Cas. 823.]

(r) *O'Keeffe v. Calthorpe*, 1 Atk. 18; and see *Pepper v. Tuckey*, 2 Jon. & Lat. 95.

(s) *Lee v. Young*, 2 Y. & C. C. C. 532.

<sup>1</sup> *Bouldin v. Alexander*, 15 Wall. 132; *Ward v. Doe*, 69 N. C. 279.

*trust* (*t*), or because a *cestui que trust* puts forward a claim which may be unfounded that property of the trustee ought to be brought into the settlement (*u*), or because the trustee has transgressed the *strict line* of his duty, provided there was *no wilful default*, but merely a *misunderstanding* (*v*)<sup>1</sup>. Where, however, a trustee pertinaciously insisted on being continued in the office, though his co-trustees were unwilling to act with him, Lord Nottingham said, "He liked not that a man should be ambitious of a trust when he could get nothing but trouble by it," and without any reflection on the conduct of the trustee, declared he should meddle no further in the trust (*w*).

9. As the substitution of a trustee by the Court proceeds upon a full consideration of the case, and is never made unless the Court is satisfied as to the fitness of the person proposed, it cannot be expected that the Court should, when appointing new trustees and directing the trust property to be conveyed to them, authorize the insertion of a *power* in the conveyance, enabling the new trustees to *nominate other trustees* in their stead as often as occasion may require: this would plainly be an abandonment by the Court of its own jurisdiction—a delegation of it to the care and judgment of individuals. Accordingly, notwithstanding some previous fluctuation in the practice (*x*), it is now settled that, except in charity cases (*y*), the Court will not authorize the insertion of such a power in the deed of conveyance (*z*).

In appointing new trustees the Court will not give them a power of appointing other trustees.

\* 10. In appointing new trustees the Court [ \* 850 ] does not act arbitrarily, but upon certain general principles for selecting new trustees.

(*t*) Forster v. Davies, 4 De G. F. & J. 133.

(*u*) S. C.

(*v*) See Attorney-General v. Coopers' Company, 19 Ves. 192; Attorney-General v. Caius College, 2 Keen, 150.

(*w*) Uvedale v. Ettrick, 2 Ch. Ca. 130.

(*x*) Joyce v. Joyce, 2 Moll. 276; White v. White, 5 Beav. 221.

(*y*) Attorney-General v. Hurst, M. R. Dec. 2, 1791, Reg. Lib. A. 1791, f. 487; see the decree, stated Seton's Dec. 4th ed. p. 585; *In the matter of* 52 G. 3, c. 101, 12 Sim 262; *Re Lovett's Exhibition*, Sidn. Suss. Coll. Camb. cor. V. C. Knight Bruce, Dec. 20, 1849.

(*z*) Bayley v. Mansell, 4 Madd. 226; Brown v. Brown, 3 Y. & C. 395; Southwell v. Ward, Tam. 314; Bowles v. Weeks, 14 Sim. 591; Oglander v. Oglander, 2 De G. & Sm. 381; Holder v. Durbin, 11 Beav. 594, in which last case Lord Langdale, M. R., in deference to the views of the other judges, declined to follow his own previous decision in White v. White.

<sup>1</sup> Lathrop v. Smalley, 23 N. J. Eq. 192; or because he has bought trust property at his own sale. Webb v. Dietrich, 7 W. & S. 401.

ciples. *First*, the Court has regard to the *wishes of the author of the trust*, whether actually expressed in the instrument, or plainly deducible from it; and if he has declared a particular person not fit to be appointed a trustee, the Court will refrain from appointing him. *Secondly*, the Court will not appoint a new trustee with a view to the interest of some of the parties beneficially interested, in opposition to the wishes of others; for a trustee ought to hold an *even hand as between all parties*, and not favour a particular class. And, *thirdly*, the Court has regard to the nature of the trust, and the question by whose instrumentality it can *best be carried into execution* (a).

Statutory  
powers.

11. The exercise by the *cestui que trust* of his right to have the custody of the trust estate confided to a proper number of duly qualified trustees has been greatly facilitated by various statutes enabling him to obtain, in certain cases, the removal of unfit trustees, and the appointment of others in their room, and also the appointment of new trustees where the office is merely vacant; and this by a cheaper and more summary proceeding than by action.

[46 & 47 Vict.  
c. 147.]

[12. By the last Bankruptcy Act, 46 & 47 Vict. c. 52, s. 147, which in substance re-enacted the 117th section of the Bankruptcy Act, 1869, it is enacted, that "where a *bankrupt* is a trustee within the Trustee Act, 1850, sect. 32 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not) if it appears expedient so to do" (b). Under this section the Court will, as a general rule, remove a trustee where the bankruptcy is recent, and it is not shown that the bankrupt is of good character, and has since his bankruptcy acquired means (c).]

2 W. 4, c. 57,  
s. 3.

13. By 2 Wm. 4, c. 57, s. 3, it was enacted that in case of the death of the trustee in whom any real property might have been vested in trust for any *charity*, the Court of Chancery might upon *petition* appoint new trustees, and direct the estate to be vested in them upon the charitable trusts.

5 & 6 W. 4,  
c. 76, s. 71.

[\* 851] \* 14. By 5 & 6 Wm. 4, c. 76, s. 71 (the Municipal Corporations Act), it was enacted that in every

(a) *Re Tempest*, 1 L. R. Ch. App. 485; 12 Jur. N. S. 539.

(b) For the law under the previous Bankruptcy Act, 12 & 13 Vict. c. 106, repealed by 32 & 33 Vict. c. 83, s. 20, see the 5th edition of the Law of Trusts, p. 607.

(c) *Re Adams' Trust*, 12 Ch. D. 634; a case under the Bankruptcy Act, 1869, of a compounding creditor; and see *Coombes v. Brookes*, 12 L. R. Eq. 61.]

borough in which the body corporate, or any one or more of the members of such body corporate in *his or their corporate capacity* then stood solely or together with any person or persons elected solely by such body corporate, or by any members thereof, *seised or possessed for any estate or interest whatsoever* of any hereditaments or personal estate whatsoever, in whole or in part, in trust for any charitable trusts, all the estate and interest, and all the powers of such body corporate or of such members thereof, should, from and after the 1st day of August, 1836, utterly cease; with a proviso that if Parliament should not otherwise direct, on or before the said 1st day of August, 1836 (*which was not done*), the Lord Chancellor should make such orders as he should see fit for the administration of such trust estates.

Under the authority "to make orders," the Court of Jurisdiction Chancery from time to time, for the due management of the charity property, appointed trustees in the place of the corporation. The jurisdiction of the Court, however, was held not to apply to a case where no estate was vested in the *old corporation*, but the charity property was vested in trustees, and the *corporation* was merely the visitor with powers of nomination (*d*). Where there was a charity corporation *substantially*, though not *identically*, the same in its component parts as the municipal corporation, the case was held to be within the spirit if not the letter of the section above referred to (*e*). of the Court of Chancery under 5 & 6 W. 4, c. 76, s. 71.

The appointment of trustees by the Court under this Act, though it made them custodiers of the property, could not of course transfer to them the legal estate, which notwithstanding the strong negative words used in the statute, it was decided, remained in the corporation (*f*). Legal estate.

15. But by 16 & 17 Vict. c. 137, s. 65, the legal estate was vested without any actual conveyance in the trustees appointed by the Court, and upon the death, resignation or removal, of any of the trustees, and the appointment of any new trustee or trustees, the legal estate transferred itself to the trustees for the time being without any conveyance. 16 & 17 Vict. c. 137, s. 65.

16. [It was held that] petitions for filling up vacan-

(*d*) Attorney-General v. Newbury Corporation, C. P. Coop. Rep. 1837-38, 72; Christ's Hospital v. Grainger, 16 Sim. 102.

(*e*) Attorney-General v. Mayor, &c. of Exeter, 2 De G. M. & G. 507.

(*f*) Doe v. Norton, 11 M. & W. 913.

Petitions for appointment of new trustees of charities.

cies in the number of trustees of charities, in substitution for a corporation, ought to be presented under Sir S. Romilly's Act (52 Geo. 3, c. 101), as well as the Municipal Corporations Act (*g*), and that the [\* 852] \* Attorney-General's fiat should be obtained to such a petition (*h*); though, this rule does not appear to have been uniformly adhered to (*i*).

[45 & 46 Vict.-c. 50, s. 133.]

[17. By the Municipal Corporations Act, 1882 (*k*), which repealed the previous Municipal Corporations Act, and 16 & 17 Vict. c. 137, s. 65, without prejudice to anything done under those Acts respectively, the provision for the transfer of the legal estate without conveyance on the appointment of new trustees is, by sect. 133, re-enacted. It is to be observed that the section does not continue the power to make orders for the administration of trust estates, but the appointment of trustees can still be made under Sir S. Romilly's Act, though it will seldom be necessary to resort to it for the purpose.]

Appointment of trustees of charities under the Charitable Trusts Act.

18. By the Charitable Trusts Act (16 & 17 Vict. c. 137, s. 28), new trustees of any charity the gross annual income whereof exceeds 30*l.* (*l*) may be appointed by one of the *equity judges in chambers*, and the Court has power at the same time to make an order under the Trustee Act, *without petition*, vesting the estates in the new trustees (*m*). But the sanction of the Charity Commissioners, under the 17th section, must first be obtained. And by a more recent Act still (23 & 24 Vict. c. 136, s. 2), the *Charity Commissioners* are empowered upon the application of the *trustees* or a *majority* of them, under their hands or common seal, to make the *like orders for the appointment of new trustees of charities as could have been made by a judge at chambers*; and this power extends even to contentious cases (*n*).

(*g*) *Re Warwick Charities*, 1 Ph. 559.

(*h*) *Re Rolle's Charity*, 3 De G. M. & G. 153; *Re London, Brighton and South Coast Railway Company*, 18 Beav. 608.

(*i*) *Re Nightingale's Charity*, 3 Hare, 336; *Re Belke's Charity*, 13 Jur. 317.

[(*k*) 45 & 46 Vict. c. 50.]

(*l*) By s. 32, where the income is below 30*l.* (since extended by 23 & 24 Vict. c. 136, s. 11, to an income not exceeding 50*l.*), the District Courts of Bankruptcy and County Courts have jurisdiction.

(*m*) *Re Davenport's Charity*, 4 De G. M. & G. 839. In *Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011, V. C. Stuart does not appear to have had his attention drawn to the previous decision of Lord Cranworth in *Davenport's Charity*.

(*n*) *Re Burnham National Schools*, 17 L. R. Eq. 241.



19. By 13 & 14 Vict. c. 28, "Wherever freehold, Peto's Act. leasehold, copyhold, or customary property in England or Wales, has been or shall be acquired by any congregation, or society, or body of persons associated for *religious purposes* or for the promotion of *education*, as a chapel, meeting-house," &c., "and wherever the conveyance, assignment, or other assurance of such property has been or may be taken" to trustees duly appointed, such conveyance, assignment, or other assurance shall not only vest the property in \* the [ \* 853 ] parties named, but also in their successors from time to time, and where there is *no power to appoint new trustees*, the *society* may, for the purpose of vesting the estate, appoint new *trustees*; [but every] such appointment [whether under a power in the trust deed or by virtue of the Act] must be evidenced by deed under the hand and seal of the chairman and attested by two witnesses. The primary, if not the only object of this enactment obviously was to make the trust estate devolve upon the trustees of the society from time to time without conveyance, and it is doubtful whether the new trustees to be thus appointed by the society [in the absence of any special direction in the trust deed] succeed generally to all the powers of the old trustees, or take the legal estate only (o).

20. Amongst the various provisions of the Trustee 13 & 14 Vict. Act, 1850, (13 & 14 Vict. c. 60) it is enacted (by s. 32) c. 60. that whenever it shall be *expedient* to appoint a new trustee or trustees, and it shall be found *inexpedient, difficult, or impracticable*, so to do without the assistance of the Court, the Court may *appoint a new trustee* or trustees, either in substitution for or in addition to any existing trustee or trustees (p). The effect of this section will be considered more particularly in the Appendix, in treating of the provisions of the Act generally.

*Secondly*, The *cestui que trust* is entitled to bring an action against his trustee, and *compel him to the execution of any particular act of duty*. Trustees may be compelled to any act of duty.

1. Thus, if the legal estate in the hands of the trustee

(o) See as to the construction of the Act, *Re Houghton's Chapel*, 2 W. R. 631.

(p) Notwithstanding the very large terms of this enactment, it does not authorize the Court to *remove* a trustee who is willing to act: *Re Hodson's Settlement*, 9 Hare, 118; *Re Hadley*, 5 De G. & Sm. 67; *Re Blanchard*, 3 De G. F. & J. 131; 7 Jur. N. S. 505; *Re Mais*, 16 Jur. 608; *Re Garty's Settlement*, 4 N. R. 636; [*Re Combs*, 51 L. T. N. S. 45.] See the Act with notes in the Appendix.

Maintenance of right at law. be disturbed by a stranger, the *cestui que trust*, though he may not institute legal proceedings in the name of a trustee without his authority (*q*), may oblige the trustee, on giving him a proper indemnity, to lend his name for asserting the legal right (*r*)<sup>1</sup>. If the trustee of a covenant, even a voluntary one, will not sue upon it, the *cestui que trust* may compel the trustee on a proper indemnity to lend his name to the *cestui que trust*, to enable him to sue (*s*). Otherwise, should the trust [ \* 854 ] property be lost, and the \* trustee himself become insolvent, the *cestui que trust's* equitable interest would be absolutely destroyed.

Tenant for life of renewable leaseholds neglecting to renew. 2. If a tenant for life of leaseholds be bound to renew, and by his threats or acts manifest an intention not to renew, the remainderman may institute proceedings and have a receiver appointed for the purpose of providing the renewal fine out of the rents and profits of the estate ; and if the period of renewal has already expired, a receiver may be appointed on proof of the tenant for life's default (*t*).

Trustee giving security. 3. In one case, where a suspicion was entertained that the trustee would not fairly execute his trust, the Court required of him, if he continued in the office, to enter into securities for his good faith (*u*).

*Cestui que trust* may have a contingent interest secured. 4. And generally a *cestui que trust*, who can allege an existing interest, however minute or remote, may, upon reasonable cause shown, apply to the Court to have his interest properly secured.

Possibility upon a possibility. 5. But a distinction must be taken between an existing interest, whether vested or contingent, and the *mere possibility of a future event, which, if it occurs, may give birth to an interest*. Thus where a one-fifteenth share of a residue was bequeathed to Isaac for life, if he married Esther, and after his death for Isaac's eldest or only child living at his decease, and who should attain twenty-one, with a gift over in case Isaac should not marry Esther, and Isaac married Isabella while Esther was still living, it was held by M. R. (*v*), and

(*q*) See Crossley v. Crowther, 9 Hare, 386.

(*r*) Foley v. Burnell, 1 B. C. C. 277, per Lord Thurlow; Cary, 14; and see Kirby v. Mash, 3 Y. & C. 295; Malone v. Geraghty, 2 Conn. & Laws. 251.

(*s*) See Fletcher v. Fletcher, 4 Hare, 78; Jerdein v. Bright, 2 J. & H. 325.

(*t*) See Bennett v. Colley, 5 Sim. 192; S. C. 2 M. & K. 233.

(*u*) Keeling v. Child, Rep. t. Finch, 360.

(*v*) Davis v. Angel, 31 Beav. 223.

<sup>1</sup> Ins. Co. v. Smith, 11 Pa. St. 120; Cox v. Walker, 26 Me. 504; First Bap. Society v. Hazen, 100 Mass. 322.

affirmed by Lord Westbury (*w*), that the eldest child of Isaac, an infant, as his interest was preceded by the condition that Isaac should survive his present wife and then marry Esther, a possibility upon a possibility, could not sustain a suit for having his interest secured. Had Isaac survived his wife and then married Esther, the interest of the child would still have been contingent, and in that case M. R. appears to have thought that the child would have had no *locus standi* in Court, but L. C. was of a different opinion. And in another case, where a house was devised to trustees in trust for A. for life, and after his decease for the children of A. then living, and the issue of such of them as should be dead, and failing such children and issue in trust for a class, and some of the class presented a petition for the appointment of new trustees, on the footing that they were "persons beneficially interested" under the 37th section of the Trustee Act, 1850, M. R. dismissed the petition \* with costs (*x*), but on appeal the [ \* 855 ] order below was reversed, and the L. J. J. held that the petitioners were persons beneficially interested (*y*).

*Thirdly.* As the *cestui que trust* may compel the trustee to the observance of his duty, so, on the other hand, if the *cestui que trust* have reason to suppose, and can satisfy the Court, that the trustee is about to proceed to an act not authorized by the true scope of the trust, he may obtain an injunction from the Court to restrain the trustee from such a wanton exercise of his legal power (*z*).<sup>1</sup>

Trustee may be restrained from violating his duty.

1. It is clear the *cestui que trust* would be entitled to an injunction where the act in contemplation would, if done, be irremediable (*a*); but in *Pechel v. Fowler* (*b*), a case in the Exchequer while a Court of equity, it is said to have been held, that a *cestui que trust* could not

Though the damage would not be irreparable.

(*w*) 10 W. R. 723.

(*x*) *Re Sheppard's Trusts*, 10 W. R. 704.

(*y*) 1 N. R. 76; 4 De G. F. & J. 423.

(*z*) *Balls v. Strutt*, 1 Hare, 146. So a mortgagee with a power of sale will proceed at his peril to sell the mortgaged estate after tender of principal and interest, though costs be not included, if the security be sufficient; and a purchaser with notice cannot shelter himself under a clause in the mortgage deed exempting the purchaser from the necessity of seeing to the validity of the sale; *Jenkins v. Jones*, 2 Giff. 99.

(*a*) See *Corporation of Ludlow v. Greenhouse*, 1 Bligh. N. S. 57; *Re Chertsey Market*, 6 Price, 279, 281; *Attorney-General v. Foundling Hospital*, 2 Ves. jun. 42.

(*b*) 2 Anst. 549.

<sup>1</sup> *Trenton &c. v. McKelway*, 4 Hallst. Ch. 84; *North Am. Coal Co. v. Dyett*, 7 Paige, *Dodge v. Woolsay*, 18 How. 331; *Bank v. DeBolt*, Ib. 330.

restrain an improvident sale by the trustee, because the *cestui que trust* might proceed against the trustee for the consequential damage to the trust estate, and so the injury was not irreparable; but Sir J. Leach, under similar circumstances, granted an injunction (c); and other authorities are not wanting in support of so just and reasonable a right, which may now be considered as established (d).

Partial owner  
may obtain  
injunction.

2. And not only a person exclusively interested in a trust fund, and therefore the absolute owner, may obtain an injunction against the disposition of it, which is almost matter of course; but one who has only a common interest with others, in the trust estate, is entitled on behalf of himself and those others to have the property secured (e).<sup>1</sup>

Injunction  
against bank-  
rupt or in-  
solvent  
trustee.

3. An injunction against the disposition of the fund may be obtained against an insolvent trustee (f) and [ \*856 ] *à fortiori* against one \* who is actually a bankrupt (g), but the Court will not interpose because an executor is merely poor (h); but the Court will grant an injunction against the administration of the assets by an executor who is proved to be of bad character, drunken habits, and great poverty (i), [and the Court will in a creditors' action appoint a receiver against an executor if there is any danger of his exercising his legal right to pay any creditor in full (k).]

[Solicitor  
buying up  
mortgages by  
his client.]

4. If a solicitor buy up mortgages created by his client in order to relieve the client from embarrassment, and afterwards refuses to give information as to the securities and threatens to sell the property, he will be restrained from selling upon the terms of the client paying into Court such a sum as the Court considers sufficient to cover the amount actually paid by the solicitor (l).]

(c) Anon. case, 6 Mad. 10.

(d) See Webb v. Earl of Shaftesbury, 7 Ves. 487, 488; Reeve v. Parkins, 2 J. & W. 390; Milligan v. Mitchell, 1 M. & K. 446; Attorney-General v. Mayor of Liverpool, 1 M. & Cr. 210; Vann v. Barnett, 2 B. C. C. 157; Dance v. Goldingham, 8 L. R. Ch. App. 902.

(e) Scott v. Becher, 4 Price, 346; Dance v. Goldingham, 8 L. R. Ch. App. 902.

(f) Mansfield v. Shaw, 3 Mad. 100; Scott v. Becher, 4 Price, 346; Taylor v. Allen, 2 Atk. 213.

(g) Gladdon v. Stoneman, 1 Mad. 143, note.

(h) Howard v. Papera, 1 Mad. 143; Hathornthwaite v. Russel, 2 Atk. 126; S. C. Barn. 334.

(i) Everett v. Prythergh, 12 Sim. 365.

[(k) Re Radcliffe, 7 Ch. D. 733.]

[(l) Macleod v. Jones, 24 Ch. D. 289.]

<sup>1</sup> Clarke v. Devereaux, 1 S. C. 172.

THE REMEDIES OF THE CESTUI QUE TRUST IN THE  
EVENT OF A BREACH OF TRUST.

UPON the subject of the *cestui que trust's* remedies for a breach of trust, we shall consider, *First*. The right of the *cestui que trust* to follow the *specific* estate into the hands of a stranger, to whom it has been tortiously conveyed; *Secondly*. The right of attaching the property into which the trust estate has been *wrongfully converted*; *Thirdly*. The remedy against the trustee *personally*, by way of compensation for the mischievous consequences; and *Fourthly*. The *mode* and *extent* of redress in breaches of trust committed by trustees of charities.

SECTION I.

OF FOLLOWING THE ESTATE INTO THE HANDS OF A STRANGER.

THE questions that suggest themselves upon this subject are, *First*. Into whose hands the estate may be followed; *Secondly*, Within what limits of time; *Thirdly*, What account the Court will direct of the mesne rents and profits.

*First. Into whose hands the estate may be followed.*

1. If the alienee be a *volunteer*, then (subject to any bar arising out of the Statute of Limitations) the estate may be followed into his hands, whether he had notice of the trust (*m*), or not (*n*);<sup>1</sup> for though he had no actual notice, yet the Court will imply it against

Where alienee is a volunteer estate may be followed.

(*m*) *Mansell v. Mansell*, 2 P. W. 678; and see *Saunders v. Dehew*, 2 Vern. 271; S. C. 2 Freem. 123; *Langton v. Astrey*, 2 Ch. Rep. 30; S. C. Nels. 126.

(*n*) *Mansell v. Mansell*, 2 P. W. 681, *per Cur.*; *Bell v. Bell*, Ll. & G. t. Plunket, 58, *per Cur.*; *Pye v. George*, 2 Salk. 680, *per Lord Harcourt*; and see 1 Rep. 122 b; *Burgess v. Wheate*, 1 Eden, 219; *Spurgeon v. Collier*, 1 Eden, 55; *Cole v. Moore*, Mo. 806.

<sup>1</sup> *Lyford v. Thurston*, 16 N. H. 399; *Barr v. Cabbage*, 52 Mo. 404.

[\* 858] \*him where he paid no consideration. But if the alienee be a *purchaser* of the estate at its full value, then (subject as aforesaid) if he take with *notice* of the trust, whether the notice be actual or constructive (*o*), he is bound to the same extent and in the same manner as the person of whom he purchased (*p*),<sup>1</sup> even though the conveyance was made to him by fine with non-claim (*q*); for, knowing another's right to the property, he throws away his money voluntarily, and of his own free will (*r*). And the rule applies not only to the case of a trust, properly so called, but to purchasers with notice of any equitable incumbrance, as of a covenant or agreement affecting the estate (*s*), or a *lien* for purchase-money (*t*). But, if a *bonâ fide* purchaser have *not notice*, either expressly or constructively, he then merits the full protection of the Court, and his title, even in equity, cannot be impeached (*u*).<sup>2</sup>

(*o*) *Boursot v. Savage*, 2 L. R. Eq. 134. And see *Hartford v. Power*, 2 Ir. Rep. Eq. 204.

(*p*) *Dunbar v. Tredennick*, 2 B. & B. 319, *per* Lord Mannors; *Pawlett v. Attorney-General*, Hard. 469, *per* Lord Hale; *Burgess v. Wheate*, 1 Eden, 195, *per* Sir T. Clarke; *Bovey v. Smith*, 1 Vern. 149; *Phayre v. Peree*, 3 Dow, 129; *Adair v. Shaw*, 1 Sch. & Lef. 262, *per* Lord Redesdale; *Wigg v. Wigg*, 1 Atk. 382; *Mead v. Lord Orrery*, 3 Atk. 238, *per* Lord Hardwicke; *Mackreth v. Symmons*, 15 Ves. 350, *per* Lord Eldon; *Mansell v. Mansell*, 2 P. W. 681, *per Cur.*; *Willoughby v. Willoughby*, 1 T. R. 771, *per* Lord Hardwicke; *Verney v. Carding*, cited *Joy v. Campbell*, 1 Sch. & Lef. 345; *Flemming v. Page*, Rep. t. Finch. 320; *Powell v. Price*, 2 P. W. 539, admitted; *Backhouse v. Middleton*, 1 Ch. Ca. 173; S. C. Id. 208; *Walley v. Walley*, 1 Vern. 484; *Pearce v. Newlyn*, 3 Mad. 186; *Slattery v. Axton*, W. N. 1866, p. 113; *Macbryde v. Eykyn*, W. N. 1867, p. 306; *Heath v. Crea-lock*, 18 L. R. Eq. 215, 10 L. R. Ch. App. 22.

(*q*) *Kennedy v. Daly*, 1 Sch. & Lef. 355; and see *Bell v. Bell*, Ll. & G. t. Plunket, 44.

(*r*) *Mead v. Lord Orrery*, 3 Atk. 238, *per* Lord Hardwicke.

(*s*) *Daniels v. Davison*, 16 Ves. 249; *Earl Brook v. Bulkeley*, 2 Ves. 498; *Taylor v. Stibbert*, 2 Ves. jun. 437; *Winged v. Lefebury*, 2 Eq. Ca. Ab. 32; *Ferrars v. Cherry*, 2 Vern. 384; *Jackson's case*, Lane, 60; *Crofton v. Ormsby*, 2 Sch. & Lef. 543; *Kennedy v. Daly*, 1 Sch. & Lef. 355.

(*t*) *Mackreth v. Symmons*, 15 Ves. 329; *Walker v. Preswick*, 2 Ves. 622, *per* Lord Hardwicke; *Cator v. Pembroke*, 1 B. C. C. 302, *per* Lord Loughborough; *Gibbons v. Baddall*, 2 Eq. Ca. Ab. 682, note (*b*); *Elliott v. Edwards*, 3 B. & P. 181; and see *Grant v. Mills*, 2 V. & B. 306; *Dunbar v. Tredennick*, 2 B. & B. 320.

(*u*) *Burgess v. Wheate*, 1 Eden, 195, *per* Sir T. Clarke; Id. 246,

<sup>1</sup> *Derr v. McKnight*, 6 Halst. 385; *Pugh v. Bell*, 1 J.J. Marsh, 403; *Ryan v. Doyle*, 31 Io. 53; *Jones v. Shaddock*, 41 Ala. 362; *Hood v. Fahnestock*, 1 Barr. 470; *Smith v. Walter*, 49 Mo. 250.

<sup>2</sup> *Rutgers v. Kingsland*, 3 Halst. Ch. 178, 658; *Curtis v. Lanier*, 6 Munf. 42; *Hamilton v. Ins. Co.*, 3 Tenn. Ch. 124; *Alexander v. Pendleton*, 8 Cranch. 462; *Filby v. Miller*, 1 Casey, 264.

2. If the purchaser have no notice of the trust at the time of the purchase, but afterwards *discovers the trust* and obtains a conveyance from the trustee, he cannot protect himself by taking shelter under the legal estate; for this is not like getting in a first mortgage, which the first mortgagee has a right to transfer to \*whomsoever he will (*v*); but here notice of [\* 859] the trust converts the purchaser into a trustee, and he must not, to get a plank to save himself, be guilty of a breach of trust (*w*). A purchaser taking the legal estate without actual notice of the trust, but taking it from a person in whom it vested by an instrument which disclosed the trust, but of which instrument the purchaser was ignorant at the time of purchase, can still protect himself as a purchaser without notice (*x*).

Purchaser without notice cannot protect himself by getting in legal estate from an express trustee.

Where a trustee of shares of a company within the Companies' Clauses Consolidation Act transferred them to a stranger without notice, but who had notice before the transfer was registered, the purchaser was protected; for he had no notice when he paid his money, and it was like a conveyance where the legal estate was to become vested on the performance of some condition, such as making a demand or the like, and the registration involved no breach of trust by the trustee (*y*).

Shares in a company.

A trustee who has the legal estate and takes from his *cestui que trust* an assignment of the equitable interest by way of security for money advanced to the *cestui que trust*, can avail himself of the legal estate as a protection against a prior incumbrance of which he had no notice; *Newman v. Newman*, 28 Ch. D. 674.

*per* Lord Henley; Millard's case, 2 Freem. 43; Mansell v. Mansell, 2 P. W. 681, *per Cur.*; Willoughby v. Willoughby, 1 T. R. 771, *per* Lord Hardwicke; Dunbar v. Tredennick, 2 B. & B. 318, *per* Lord Manners; Trevor v. Trevor, 1 P. W. 633; Harding v. Hardrett, Rep. t. Finch. 9; Cole v. Moore, Mo. 806, *per Cur.*; Jones v. Powles, 3 M. & K. 581; Payne v. Compton, 2 Y. & C. 457; Thorndike v. Hunt, 3 De G. & J. 563; Heath v. Crealock, 18 L. R. Eq. 215, 10 L. R. Ch. App. 22; Waldy v. Gray, 20 L. R. Eq. 238.

(*v*) Bates v. Johnson, Johns. 304; Baillie v. M'Kewan, 35 Beav. 177; Joyce v. Rawlins, 11 L. R. Eq. 53; Mumford v. Stohwasser, 18 L. R. Eq. 556.

(*w*) Saunders v. Dehew, 2 Vern. 271; S. C. 2 Freem. 123; Langton v. Astrey, 2 Ch. Rep. 30; S. C. Nels. 126; Carter v. Carter, 3 K. & J. 617; Sharples v. Adams, 32 Beav. 213; Collier v. McBean, 34 Beav. 426; Justice v. Wynne, 10 Ir. Ch. Rep. 489; 12 Ir. Ch. Rep. 289; Prosser v. Rice, 28 Beav. 68; Heath v. Crealock, 10 L. R. Ch. App. 22.

(*x*) Pilcher v. Rawlins, 7 L. R. Ch. App. 259, overruling Carter v. Carter, 3 K. & J. 617.

(*y*) Dodds v. Hills, 2 H. & M. 424; [and see *France v. Clark*, 22 Ch. D. 830; 26 Ch. D. 257.]



Purchaser  
without  
notice from  
purchaser  
with notice.

3. A purchaser *without notice from a purchaser with notice* is not liable, for his own *bona fides* is a good defence in itself, and the *mala fides* of the vendor ought not to invalidate it (z). But the rule does not apply to the case of a *charitable use*, for it has been ruled that a purchaser without notice from a purchaser with notice shall be bound by the claim of a charity (a). In other respects the principles of equity as to the doctrine of notice are applicable to charities in the same manner as between private persons (b),

Purchaser  
with notice  
from pur-  
chaser with-  
out notice.

4. A purchaser *with notice from a purchaser without notice* is exempt from the trust, not from the merits of the second purchaser, but of the first; for if an innocent purchaser were prevented from disposing of the beneficial interest, the necessary result would be a stagnation of property (c)<sup>1</sup>. But if the trustee sell the lands to a *bona fide* purchaser without notice, and afterwards *himself* become the owner of the lands, though for a good and valuable consideration, the trust as to him revives again, and he shall restore the land to the trust (d)<sup>2</sup>, and in this respect equity follows the law; for if a trespasser of goods sell them in the market overt, the owner's title is barred; but if they come to the trespasser again, the owner may seize them (e). ["The only exception to the rule which protects a purchaser with notice taking from a purchaser without notice is that which prevents a trustee buying back trust property which he has sold, or a fraudulent man who has acquired property by fraud saying he sold

(z) *Mertins v. Jolliffe*, Amb. 313, *per* Lord Hardwicke; *Ferrars v. Cherry*, 2 Vern. 384; see *Pitts v. Edelfh, Tothill*, 164; *Salsbury v. Bagott*, 2 S. W. 608.

(a) *East Greenstead's case*, Duke, 65; *Sutton Colefield case*, Id. 68; and see Id. 94, 173; see *Commissioners of Charitable Donations v. Wybrants*, 2 Jon. & Lat. 194.

(b) See Sugd. Vend. & Pur. 722, 14th edit.

(c) *Harrison v. Forth*, Pr. Ch. 51; *Bradwell v. Catchpole*, stated *Walker v. Symonds*, 3 Sw. 78, note (a); *Mertins v. Jolliffe*, Amb. 313, *per* Lord Hardwicke; *Brandlyn v. Ord*, 1 Atk. 571, *per eundem*; *Sweet v. Southcote*, 2 B. C. C. 66; *M'Queen v. Farquhar*, 11 Ves. 478, *per* Lord Eldon; *Lowther v. Carlton*, 2 Atk. 242; S. C. 3 Barn. 358; S. C. For. 187; *Andrew v. Wrigley*, 4 B. C. C. 136, *per Cur.*; *Salsbury v. Bagott*, 2 Sw. 608, *per Cur.*; [*Re Barrow's case*, 14 Ch. D. 432.]

(d) *Bovy v. Smith*, 2 Ch. Ca. 124; S. C. 1 Vern. 60, 84, 144; *Kennedy v. Daly*, 1 Sch. & Lef. 379, *per* Lord Redesdale.

(e) See *Bovy v. Smith*, 2 Ch. Ca. 126.

<sup>1</sup> *Bumpus v. Platner*, 1 Johns. Ch. 213, by Chancellor Kent; *Fletcher v. Peck*, 6 Cranch. 133; *Boynton v. Rees*, 8 Pick. 329.

<sup>2</sup> *Church v. Reland*, 14 P. F. Sm. 444; *Ashton's App.* 23-Id. 153; *Troy City Bank v. Wilcox*, 24 Wis. 671.

it to a *bonâ fide* purchaser without notice, and has got it back again" (f)]

5. Upon the question, how far a purchaser will be bound by notice of a *doubtful equity*, Lord Northington said, in *Cordwell v. Mackrill* (g), "A man must take notice of a deed on which *an equity, supported by precedents the justice of which every one acknowledges, arises, but not the mere construction of words, which are uncertain in themselves, and the meaning of which often depends on their locality.*" And Sir W. Grant observed, "There may be such a *doubtful equity* that a purchaser is *not to be taken to know what will be the decision*, and that is all Lord Camden (h) means; but in this case the equity is *clear*" (i).

How far purchaser bound by notice of a doubtful equity.

6. "The rule, that "heirs of the body" in articles shall be construed "first and other sons," does not appear to have been fully established till about the year 1720 (k): Lord Hardwicke therefore said, that notice of *ancient* articles, that is, of articles before the doctrine was well settled, should not bind a *bonâ fide* purchaser (l). And afterwards, in a case of both articles and settlement before marriage, the settlement reciting the articles, Lord Hardwicke thought that, as the equity in this instance rested upon a single authority (m), and *that* one in which the question arose between the parties and their representatives and mere volunteers, the purchaser ought not to be bound by the claim of the issue (n). But notice of *modern* articles, that is, of articles entered into since the clear establishment of the rule, will affect a purchaser (o); but, even then, the articles themselves must be produced, that the Court may judge from the whole instrument; for the true construction depends upon the words, and other parts of the deed may be material to find out their meaning (p).

Notice of 'heirs of the body.'

Lord St. Leonards observed, that *Cordwell v. Mackrill* was of no great authority, though decided by a great Judge; and conceived the true rule to be that, where upon

Lord St. Leonards's observations on *Cordwell v. Mackrill*.

[(f) *Per* Jessel, M. R. *Re Barrow's case*, 14 Ch. D. 445.]

(g) 2 Eden, 347; S. C. Amb. 516.

(h) Sir W. Grant appears to have supposed that the decision was by Lord Camden.

(i) *Parker v. Brooke*, 9 Ves. 588.

(k) By *Trevor v. Trevor*, 1 P. W. 622.

(l) *Senhouse v. Earle*, Amb. 288; and accordingly relief not asked against purchasers in *West v. Errissey*, 2 P. W. 349.

(m) *West v. Errissey*, 2 P. W. 349.

(n) *Warrick v. Warrick*, 3 Atk. 291.

(o) *Senhouse v. Earle*, Amb. 288, *per* Lord Hardwicke; *Davies v. Davies*, 4 Beav. 54; and see *Parker v. Brooke*, 9 Ves. 587.

(p) *Cordwell v. Mackrill*, Amb. 515; S. C. 2 Eden, 344.

the whole articles it is plain what construction the Court would have put upon them, had it been called upon to execute them at the time they were made, they should be enforced *however difficult the construction might be*, even as against a *purchaser* with notice, but not after a lapse of time where there was anything so equivocal or ambiguous in them as to render it doubtful how they ought to be effectuated (*q*).

Title long  
neglected.

7. In a case where a residuary legatee had enjoyed for nineteen years a copyhold estate, which had been mortgaged to the testator in fee, and then the heir of the testator recovered the land by ejectment and mortgaged it, and the residuary legatee, having neglected to assert his title to the possession for nine years, at the end of that period filed a bill in Chancery, and established his claim, it was determined that the mortgagee of the heir after the ejectment was not called upon to notice the right of the residuary legatee; for it was not that "*clear, broad, plain equity*" which should affect a purchaser (*r*).

Separate use.

8. A testator had given a leasehold estate to his daughter to her sole and separate use, but *without the interposition of a trustee* (*s*), and the husband, supposing himself absolutely entitled, entered into possession, and afterwards mortgaged the premises; and it was held that the mortgagee was bound to notice the equitable construction of the will, as a doctrine well understood (*t*); and, the husband having obtained a reversionary lease and mortgaged it, the mortgagee was of course held cognisant of the rule, that leases obtained under cover of the tenant right would be subject to the equity of the original term (*u*).

Choses en  
action.

[\* 862] \*9. As regards *choses en action*, and other personal estate not transferable at law, which may have been purchased from a trustee, the purchaser, whatever amount may have been paid by him, cannot stand on a better footing than the person of whom he purchases, but must (in conformity with the established rule governing assignments of *choses en action*) hold them subject to the same equities to which the trustee held them (*v*)<sup>1</sup>.

(*q*) *Thompson v. Simpson*, 1 Dru. & War. 491.

(*r*) *Hardy v. Reeves*, 4 Ves. 466; S. C. 5 Ves. 426.

(*s*) See *supra*. p. 754.

(*t*) *Parker v. Brooke*, 9 Ves. 583.

(*u*) And see *Coppin v. Fernyhough*, 2 B. C. C. 291.

(*v*) *Ord v. White*, 3 Beav. 357; *Cockell v. Taylor*, 15 Beav. 103;

<sup>1</sup> *Cook v. Tullis*, 18 Wall. 332; *Gray v. Ulrich*, 8 Kans. 112.

10. So a trustee who has the legal estate cannot without a transfer of the legal estate create an equity, in breach of his duty; as if a trustee holding a mortgage were wrongfully to deposit the deeds by way of security, the depositee could not hold the deeds as against the *cestuis que trust*, for the transaction being inequitable in itself could not give birth to an equity (*w*). Equitable mortgage by trustee.

[11. So, where trust money was improperly laid out in the purchase of an estate, which was conveyed to A. and mortgaged by him to several persons in succession without notice of the breach of trust, of whom the first only had the legal estate, it was held that the claim of the *cestuis que trust* against the property was an equitable estate of the same quality as the estates of the equitable mortgagees, and had priority over them as being prior in time (*x*). So, where a lease was surrendered by an executor, and a new lease including additional property was taken by him in his own name and at an increased rent, and was deposited by him as a security for an advance made to him, it was held that the *cestuis que trust* had priority over the equitable mortgagee (*y*).]

12. And if a trustee in breach of his duty lend trust money, and the borrower, *with notice of the trust*, applies it to his own use, the conscience of the latter is affected, and he cannot separate the loan from the trust, and insist that, when the loan would as a loan have been barred, the trust is barred (*z*)<sup>1</sup>. Improper loans of trust money.

13. And it may be laid down generally that the rules of the Court are the rules of honesty and fair dealing, and that no party to an illegal or fraudulent contract can derive any benefit from it, and that all persons who obtain possession of trust funds with a knowledge that their title is derived from a breach of trust, will be compelled to restore such trust funds (*a*)<sup>2</sup>. General rule.

\* 14. By 37 & 38 Vict. c. 78, s. 7, no priority [ \* 863 ] or protection by reason of the legal estate was allowed

---

Clack v. Holland, 19 Beav. 262; Barnard v. Hunter, 2 Jur. N. S. 1213; Mangles v. Dixon, 1 Mac. & G. 437, 3 H. L. Ca. 702; Atheneum, &c. Society v. Pooley, 3 De G. & J. 294.

(*w*) Newton v. Newton, 6 L. R. Eq. 135, 4 L. R. Ch. App. 143; see Joyce v. De Moleyns, 2 Jon. & Lat. 374.

[(*x*) Cave v. Cave, 15 Ch. D. 639; and see Rice v. Rice, 2 Drew. 73.]

[(*y*) *Re Morgan*, 18 Ch. D. 93.]

(*z*) Ernest v. Croysdill, 2 De G. F. & J. 198, *per* L. J. Turner.

(*a*) Gray v. Lewis, 8 L. R. Eq. 526; see p. 543.

---

<sup>1</sup> Abbott v. Reeves, 49 Pa. St. 494.

<sup>2</sup> Lathrop v. Brampton, 31 Cal. 17.

even to a purchaser for value without notice; but any priority or protection so acquired before the commencement of the Act was not to be taken away; and the Act was not to apply to Scotland. But the 7th section of the Act has since been repealed by 38 & 39 Vict. c. 87, s. 129.

*Secondly. Within what limits of time the suit must be instituted.*

Time no bar in a direct trust, otherwise in a constructive trust.

1. It is a well-known rule, that, as between *cestui que trust* and trustee in the case of a *direct trust*, no length of time is a bar; for, from the privity existing between them, the possession of the one is the possession of the other, and there is no adverse title (b)<sup>1</sup>. It has hence been argued, that as the person into whose hands the estate is followed is also by the construction of law a trustee, the *cestui que trust* is entitled to the benefit of the rule, and is not precluded by mere lapse of time from establishing his claim. But the authorities show that this doctrine cannot be maintained (c)<sup>2</sup>.

"It is certainly true," said Sir W. Grant, "that no time bars a *direct trust*; but if it is meant to be asserted that a Court of equity allows a man to make

(b) See *Chalmer v. Bradley*, 1 J. & W. 67; *Bennett v. Colley*, 2 M. & K. 232; *Llvellyn v. Mackworth*, Barn. 449; *Wilson v. Moore*, 1 M. & K. 146; *Townshend v. Townshend*, 1 B. C. C. 554; *Hamond v. Hicks*, 1 Vern. 432; *Norton v. Turvill*, 2 P. W. 144; *Bell v. Bell*, Ll. & G. t. Plunket, 66; *Attorney-General v. Mayor of Exeter*, Jac. 448; *Heath v. Henly*, 1 Ch. Ca. 26; *Wedderburn v. Wedderburn*, 2 Keen, 749; 2 M. & Cr. 41; 22 Beav. 84; *Smith v. Acton*, 26 Beav. 210; *Lord Hollis's case*, 2 Vent. 345; *Earl of Pomfret v. Windsor*, 2 Ves. 484; *Hargreaves v. Michell*, 6 Mad. 326; *Nevarre v. Rutton*, 1 Vin. Ab. 185; *Shields v. Atkins*, 3 Atk. 563; *Phillipo v. Munnings*, 2 M. & Cr. 309; *Ward v. Arch*, 12 Sim. 472; *Young v. Waterpark*, 13 Sim. 204; *Gough v. Bult*, 16 Sim. 323; *Massy v. O'Dell*, 10 Ir. Ch. Rep. 22; *Crawford v. Crawford*, 1 Ir. Rep. Eq. 436; [*Foxton v. Manchester, &c. Banking Company*, 44 L. T. N. S. 406.] See *post*, p. 881.

(c) *Townshend v. Townshend*, 1 B. C. C. 550, see 554; *Bonney v. Ridgard*, 1 Cox, 145; *Andrew v. Wrigley*, 4 B. C. C. 125; *Collard v. Hare*, 2 R. & M. 675; and see *Cholmondeley v. Clinton*, 2 J. & W. 190; S. C. affirmed, 4 Bligh, 4; *Bell v. Bell*, Rep. t. Plunket, 66; *Portlock v. Gardner*, 1 Hare, 594; *Ex parte Hasell*, 3 Y. & C. 622; *Wedderburn v. Wedderburn*, 4 M. & Cr. 53; but see *Attorney-General v. Christ's Hospital*, 3 M. & K. 344 (the case of a charity); *Rolfe v. Gregory*, 11 Jur. N. S. 98; 4 De G. J. & S. 576; *Sturgis v. Morse*, 3 De G. & J. 1.

<sup>1</sup> *Kane v. Bloodgood*, 7 Johns. Ch. 90; *McCandless's Estate*, 61 Pa. St. 9; *Overstreet v. Bates*, 1 J. J. Marsh, 370; *Weaver v. Leiman*, 52 Md. 710; *Buckner v. Calcott*, 28 Miss. 575; *Mather v. Bennett*, 21 N. H. 204; *Creigh v. Henson*, 10 Gratt. 231; *Norton v. Ladd*, 22 Conn. 203.

<sup>2</sup> *Williams v. First Presby. Society, &c.*, 1 Ohio St. 478; *Attorney-General v. Federal St. Meeting House*, 3 Gray, 1.

out a case of *constructive trust* at any distance of time after the facts and circumstances happened out of which it arises, I am not aware that there is any ground for a doctrine so fatal to the security of property as that would be: so far from it, that not only in circumstances where the length of time would render it extremely difficult to ascertain the true state of the fact, but, *where the true state of the fact is easily ascertained, and where \* it is perfectly clear that relief would* [\* 864] *originally have been given upon the ground of constructive trust, it is refused to the party who, after long acquiescence, comes into a Court of equity to seek that relief*" (d). And Lord Redesdale observed, "The position that *trust* and *fraud* are not within the statute must be thus qualified: that if a trustee is in possession, and does not execute his trust, the possession of the trustee is the possession of the *cestui que trust*; and if the only circumstance is, that he does not perform his trust, his possession operates nothing as a bar, because *his possession is according to his title*. But the question of *fraud* is of a very different description; that is a case where a person who is in possession by virtue of the fraud is not, in the ordinary sense of the word, a trustee, but is to be constituted a trustee by a decree of a Court of equity, founded on the fraud; and his possession in the meantime is adverse to the title of the person who impeaches a transaction on the ground of fraud" (e).

2. For more clearly understanding how lapse of time operates in reference to the remedy of the *cestui que trust* in the event of a wrongful alienation of the trust estate by the trustee, it may be useful to consider the effect of lapse of time upon suits for equitable relief generally.

General operation of lapse of time.

To claims in equity there appear to be three bars arising from lapse of time:—I. A statute of limitation; II. The presumption of something done which, if done, is subversive of the plaintiff's rights; III. The ground of public policy or inconvenience of the relief.

Three bars to equitable relief.

I. Where there is a statutable bar at law, the same period was always either by analogy, or in obedience to the statute, adopted as a bar in equity in reference to equitable claims (f).

Bar by analogy to a statute.

(d) Beckford v. Wade, 17 Ves. 97.

(e) Hovenden v. Lord Annesley, 2 Sch. & Lef. 633.

(f) See *Ex parte* Dewdney, 15 Ves. 496; Bonney v. Ridgard, 1 Cox, 149; Beckford v. Wade, 17 Ves. 97; Townshend v. Townshend, 1 B. C. C. 554; Aggas v. Pickerell, 3 Atk. 225; Belch v. Harvey, Appendix to Sugd. Vend. and Purch. No. xiv. 13th edit.;

Lord  
Camden's  
views.

(1). The language of Lord Camden upon this subject has been admired as peculiarly energetic. "As a Court of equity," he said, "has no legislative authority, it cannot properly define the time of bar by a *positive rule* to an hour, a minute, or a year; it is governed by circumstances. But as often as *Parliament has limited* [\* 865] *the time of actions and remedies to a certain period in legal proceedings, the Court of Chancery has adopted that rule, and applied it to similar cases in equity*; for when the legislature has fixed a time at law, it would be preposterous for equity, which by its own proper authority always maintained a limitation, to countenance laches beyond the period that law is confined to by Parliament; and therefore in all cases, where the legal right has been barred by Parliament, the equitable right to the same thing has been concluded by the same bar" (g).

Lord  
Redesdale's  
views.

Lord Redesdale, in a case before him, observed, "It is said that Courts of equity are not within the statutes of limitations. This is true in one respect; they are not within the *words* of the statutes, because the words apply to particular legal remedies; but they are within the *spirit* and meaning of the statutes, and have been always so considered. I think it is a mistake in point of language to say that Courts of equity act merely by *analogy* to the statutes; they act in *obedience* to them" (h)<sup>1</sup>. And again, "I think the statute must be taken *virtually* to include Courts of equity; for when the legislature has by statute limited the proceedings at law in certain cases, and provided no express limitation for proceedings in equity, it must be taken to have contemplated that equity followed law; and therefore it must be taken to have virtually enacted in the same cases a limitation for Courts of equity also" (i). And

White v. Ewer, 2. Vent. 340; Knowles v. Spence, 1 Eq. Ca. Ab. 315; Pearson v. Pulley, 1 Ch. Ca. 102; Johnson v. Smith, 2 Burr. 961; Attorney-General v. Mayor of Exeter, Jac. 448; Salter v. Cavanagh, 1 Dru. & Walsh, 668; Kingston v. Lorton, 2 Hog. 166; Foley v. Hill, 1 Ph. 399; Hamilton v. Grant, 3 Dow, 44; Marquis of Clanricarde v. Henning, 30 Beav. 175.

(g) Smith v. Clay, cited in note to Deloraine v. Browne, 3 B. C. 639.

(h) Hovenden v. Lord Annesley, 2 Sch. & Lef. 630.

(i) Hovenden v. Lord Annesley, 2 Sch. & Lef. 631; and see Marquis of Cholmondeley v. Lord Clinton, 2 J. & W. 192; Bond

<sup>1</sup> Perkins v. Cartwell, 4 Har. (Del.) 270; Manchester v. Mathewson, 3 R. I. 237; The Bank v. Daniel, 12 Pet. 56; Elsendorf v. Taylor, 10 Wheat. 152; Barnes v. Taylor, N. J. Eq. 265; Demarest v. Wynkoop, 3 Johns. Ch. 129.



the same doctrines have been repeatedly recognized by the highest authorities, amongst whom may be mentioned Lord Manners (*k*), Sir T. Plumer (*l*), Lord Lyndhurst (*m*), and Lord Westbury (*n*).

(2). Upon these principles, then, an *equitable claim* Limitation to *lands* could never have been enforced after a lapse of twenty of twenty years; for though to *writs of right* and to *years* *formendons* much longer periods were allowed at law, yet equity always looked upon these as peculiar and excepted cases, and guided itself rather by analogy to the statute of James, which fixed the limitation to the prosecution of *rights of entry* (*o*).

(3). At law the remainderman's right always ran only Bills to from the \* determination of the particular es- [ \* 866 ] redeem. tate, but in the case of a *bill to redeem* filed by the person entitled in remainder to the equity of redemption, twenty years' possession by the mortgagee without account or admission of title, though partly or wholly during the lifetime of the tenant for life, barred the remainderman; the ground for the distinction apparently being, that the remainderman might have filed a bill to redeem during a continuance of the life estate (*p*). But where the mortgagee is also tenant for life of the equity of redemption, the time does not run against the remainderman until the death of the tenant for life (*q*); and the same rule applies where the mortgagee is tenant in common with others of the equity of redemption (*r*).

(4). Where a fine, with proclamations, was levied by Fine. a person claiming adversely, though a volunteer, without actual notice or other imputation of fraud, a constructive trust was held to be barred after a lapse of five years (*s*).

(5). In the case of a *statutory bar* the limited period Statutory bar not avoided ignorance, poverty, &c. affords a substantial insuperable obstacle to the plain-

*v. Hopkins*, 1 Sch. & Lef. 429; [*Re Baker*, 20 Ch. D. 230; *Gibbs v. Guild*, 8 Q. B. D. 296; 9 Q. B. D. 59.]

(*k*) *Medlicott v. O'Donel*, 1 B. & B. 166.

(*l*) *Marquis of Cholmondeley v. Lord Clinton*, 2 J. & W. 151.

(*m*) *Foley v. Hill*, 1 Ph. 405.

(*n*) See *Knox v. Gye*, 5 L. R. H. L. 674.

(*o*) *Marquis of Cholmondeley v. Lord Clinton*, 2 J. & W. 192.

(*p*) See *Giffard v. Hort*, 1 Sch. & Lef. 407 note; *Blake v. Foster*, 4 Bligh, N. S. 140; *Corbett v. Barker*, 1 Anstr. 138, 3 Anstr. 755; *Harrison v. Hollins*, 1 S. & S. 471; but see 2 Ph. 121.

(*q*) *Rafferty v. King*, 1 Keen, 601, and cases there cited; *Burrell v. Lord Egremont*, 7 Beav. 205.

(*r*) *Wynne v. Styan*, 2 Ph. 303.

(*s*) *Bell v. Bell*, Ll. & G. t. Plunket, 44; and see 3 P. W. 310, note (G.)

tiff's claim, and no plea of poverty, ignorance or mistake, can be of any avail. However clear and indisputable the title, could the merits be enquired into, the limited time has elapsed, and the door of justice is closed (*t*). If the Court could relieve after twenty years on the ground of distress, or any similar plea, so might it after thirty, forty, or fifty; there would be no limitation, and property would be thrown into confusion (*u*).

Effect of forbearance of the trustee to sue.

(6). Sir Joseph Jekyll is reported on one occasion to have laid down the rule that, "the *forbearance* of the trustees in not doing what it was their office to have done should in no sort prejudice the *cestui que trust* (*v*); and hence it has been inferred that a right gained by a stranger through the neglect of the trustee shall be no bar in equity to the claim of the *cestui que trust*; but this is not the case generally as regards the operation of the Statutes of Limitations. "The rule, that the Statute of Limitations does not bar a trust estate," said [\* 867] Lord Hardwicke, "holds only as between *\*cestui que trust* and trustee, not as between *cestui que trust* and trustee on the one side, and strangers on the other, for that would make the statute of no force at all, because there is hardly any estate of consequence without such trust, and so the act would never take place. Therefore, where a *cestui que trust* and his trustee are both out of possession for the time limited, the party in possession has a good bar against them both" (*w*)<sup>1</sup>. "A *cestui que trust*," said Lord Redesdale, "is always barred by length of time operating against the trustee. If the trustee does not enter, and the *cestui que trust* does not compel him to enter, as to the person claiming paramount the *cestui que trust* is barred" (*x*). And Lord Mannors observed, "The opinion of Sir J. Jekyll, if intended to apply to *third persons*, which I do not conceive it was, has often been denied, and is contrary to many decisions. If trustees neglect their duty, and suffer an adverse possession of twenty years to be held, I apprehend the Statute of Limitations is a bar to the *cestui que trust* (*y*).

(*t*) Marquis of Cholmondeley v. Lord Clinton, 2 J. & W. 139, per Sir T. Plumer; Byrne v. Ferre, 2 Moll. 171, 178, per Sir A. Hart; Astley v. Earl of Essex, 18 L. R. Eq. 290. But as to mistake, see Brooksbank v. Smith, 2 Y. & C. 58.

(*u*) Hovenden v. Lord Annesley, 2 Sch. & Lef. 640.

(*v*) Lechmere v. Earl of Carlisle, 3 P. W. 215.

(*w*) Lewellin v. Mackworth, 2 Eq. Ca. Ab. 579; S. C. Barn. 445.

(*x*) Hovenden v. Lord Annesley, 2 Sch. & Lef. 629.

(*y*) Pentland v. Stokes, 2 B. & B. 75.

<sup>1</sup> Crook v. Glenn, 30 Md. 55; Maddox v. Allen, 1 Met. Ky. 1495.

(7). It results from the foregoing statements of the doctrine of the Court, that, as a general rule, where both *cestui que trust* and trustee are out of possession for the time prescribed by the Statutes of Limitations, the former suffers for the neglect of the latter and is barred. But the question still remains, whether in cases where the *cestui que trust* would, if his title were legal, have more than the ordinary time to sue (as where he is under *disability* or *entitled in remainder* only), he will be allowed the same extended period for suing in *equity*, notwithstanding that the *trustee* may be barred.

Case where *cestui que trust* is under disability, or is entitled in remainder.

(8). Where the subject matter of the trust is a debt, arising under a *covenant* or *contract*, it seems difficult to avoid the conclusion, that when the trustee is barred, the *cestui que trust* is barred also (z). But if the debtor borrowed the money as trust money, or knowing it to be such, he cannot set up the statute (a)<sup>1</sup>.

Where subject matter of trust is a debt.

(9). The same result would seem to follow where the subject matter of the trust is *land*, and the possession has been held adversely to both trustee and *cestui que trust*, without any species of privity, as when the trustee is disseised. Here there is generally no remedy in equity. The proper course for the *cestui que trust* \* is to bring ejectment in the name of the trustee. [ \* 868 ] The rare instance of a person entering without privity or authority upon lands belonging in equity to an infant may perhaps constitute an exception, the rule being that he who so enters must, whether the infant is legally or equitably entitled, be regarded as a bailiff or receiver for the infant (b). But no such exception can be maintained where the infant has *never* been in possession by himself, his guardian, or agent, but the title was adverse to those through whom he claims (c). And even the existence of the exception itself cannot be viewed as free from doubt (d).

Where subject matter is land and possession is adverse.

(z) See *Wych v. East India Company*, 3 P. W. 309; *Stone v. Stone*; 3 L. R. Ch. App. 74; *Hammond v. Messenger*, 9 Sim. 327; *Bolton v. Powell*, 14 Beav. 275.

(a) *Spickernell v. Hotham*, Kay, 669; *Bridgman v. Gill*, 24 Beav. 302; *Ernest v. Croysdill*, 2 De G. F. & J. 175; 6 Jur. N. S. 740; and see *Stone v. Stone*, 5 L. R. Ch. App. 74.

(b) See cases cited p. 886, *infra*, note (e).

(c) *Crowther v. Crowther*, 23 Beav. 305. But see *Quinton v. Firth*, 2 I. R. Eq. 414.

(d) See *Allen v. Sayer*, 2 Vern. 368, corrected from R. L. Treat, on Trusts, 3rd edit. App. X., and the author's remarks at p. 720 of the same edition; *Wych v. East India Company*, 3 P. W.

<sup>1</sup> *Upham v. Wyman*, 7 Allen, 499.

Where trust is of land and party in possession claims by conveyance from trustees. (10). Where the subject matter of the trust is *land*, and the person in possession claims by *conveyance* from the trustee, here, unless the facts warrant the defence of *purchase for value without notice*, the right of the *cestui que trust* to fix the person in possession with the liability to perform the trust falls under an ordinary head of equitable jurisdiction. The *cestui que trust* is clearly entitled to proceed in equity against the legal owner, and the only question is within what time he must do so. In these cases, it is conceived, the *cestui que trust* (although the trustee may be barred from his action of ejectment) must, in the absence of any express statutory enactment applicable to the case (*e*), be entitled to sue in equity within the same extended period in reference to disability and accruer of right, as if his title were legal (*f*).<sup>1</sup>

Fraud. (11). No time will cover a *fraud so long as it remains concealed*; for, until discovery (or at all events until the fraud might with reasonable diligence have been discovered), the title to avoid the transaction does not properly arise (*g*).<sup>2</sup> But, *after discovery*, the [\* 869] \*defendant may avail himself of the statute, for he has a right to say, "You shall not bring this matter under discussion at this distance of time; it is

309; *The Earl v. Countess of Huntingdon*, cited *Ib.* 310, note (G.); *Thomas v. Thomas*, 2 K. & J. 79.

(*e*) See p. 876, *infra*.

(*f*) See *Scott v. Scott*, 18 Jur. 755; 4 H. L. Cas. 1065.

(*g*) *Blair v. Bromley*, 2 Ph. 354; *Rolfe v. Gregory*, 11 Jur. N. S. 97; S. C. 4 De G. J. & S. 576; *Cotterall v. Purchase*, Cas. t. Talbot, 63, *per* Lord Talbot; *Medlicott v. O'Donel*, 1 B. & B. 166, *per* Lord Manners; *Arran v. Tyrawly*, cited *Ib.* 170; *Alden v. Gregory*, 2 Eden, 280; *Morse v. Royal*, 12 Ves. 374, *per* Lord Erskine; *Bicknell v. Gough*, 3 Atk. 558; *South Sea Company v. Wymondsell*, 3 P. W. 143; *Booth v. Warrington*, 4 B. P. C. 163; *Pickering v. Lord Stamford*, 2 Ves. jun. 280, *per* Lord Alvanley; *Hovenden v. Lord Annesley*, 2 Sch. & Lef. 634; *Roche v. O'Brien*, 1 B. & B. 330; *Blennerhassett v. Day*, 2 B. & B. 118, *per* Lord Manners; *Robertson v. Norris*, 1 Giff. 421; *Whatton v. Toone*, 5 Mad. 54; [*Metropolitan Bank v. Heiron*, 5 Ex. D. 319; *Gibbs v. Guild*, 8 Q. B. D. 296; 9 Q. B. D. 59;] and see *Whalley v. Whalley*, 1 Mer. 436; *Western v. Cartwright*, Sel. Cas. Ch. 34; *Re Agriculturists' Cattle Insurance Company*, 3 L. R. Eq. 769; [*Barber v. Houston*, 14 L. R. Ir. 273.] But Sir A. Hart thought time would run against fraud from the date of it, though undiscovered, provided the person entitled had knowledge of the fraud a reasonable time before the expiration of the period; *Byrne v. Frere*, 2 Moll. 157.

<sup>1</sup> *Merriam v. Hassam*, 14 Allen, 520; *Attorney-General v. Federal St. Meeting House*, 3 Gray, 1; see *Price's App.* 54 Pa. St. 472.

<sup>2</sup> *Carr v. Hilton*, 1 Curtis, C. C. 390; *Pilcher v. Flinn*, 30 Ind. 202.

entirely your own neglect that you did not do so within the period limited by the statute" (*h*).

(12). [The defendant may avail himself of the Statute of Limitations, by *pleading it himself* (*i*); but, if he neglect to do so,] he cannot shelter himself under the statute at the time of the hearing (*k*); though it seems the Court itself may still, in its own discretion, refuse to grant relief after the limited period (*l*).

How defendant may take advantage of the statute.

(13). Even when the plaintiff charges *fraud*, the defendant may plead [the statute] (*m*). If the plaintiff allege that he only discovered the fraud within the period limited by the statute, the defendant must either deny the fraud, or insist that the plaintiff had knowledge of it (*n*).

In cases of fraud.

II. The Court, after great length of time, will *presume* some act to have been done, which, if done, is a bar to the demand (*o*).<sup>1</sup>

Bar from presumption.

(1). The period at which the Court raises the *presumption* depends upon the circumstances of the case. As a general rule, the Court presumes, after a lapse of twenty years<sup>2</sup>, but where there is a statutable bar at *law*, and of a different period, the Court will not entertain a *presumption* within a *less time* than the period fixed by the statute (*p*).

At what time presumption is raised.

(*h*) *Hovenden v. Lord Annesley*, 2 Sch. & Lef. 634, *per* Lord Redesdale; *Western v. Cartwright*, Sel. Ch. Ca. 34; [*Metropolitan Bank v. Heiron*, 5 Ex. D. 319;] and see *Mulcahy v. Kennedy*, 1 Ridg. 337.

[(*i*) Rules of the Supreme Court, 1883, Ord. 19, R. 15. As to the right under the old practice to raise the question by demurrer see the 7th Edition, p. 739, and cases there cited; and as to the present practice in lieu of demurrer see Ord. 25.]

(*k*) *Prince v. Heylin*, 1 Atk. 494; *Harrison v. Borwell*, 10 Sim. 382; *Roch v. Callen*, 6 Hare, 535; *Slethig v. Lawson*, 3 K. & J. 296.

(*l*) *Prince v. Heylin*, *ubi supra*.

(*m*) *South Sea Company v. Wymondsell*, 3 P. W. 143. [*Gibbs v. Guild*, 8 Q. B. D. 296; 9 Q. B. D. 59.]

(*n*) See *Mitford on Pleading*, 269, 4th edit. [*Gibbs v. Guild*, 8 Q. B. D. 296; 9 Q. B. D. 59.]

(*o*) *Pattison v. Hawkesworth*, 10 Beav. 375; and see *Attorney-General v. Moor*, 20 Beav. 119; [but see *Thomson v. Eastwood*, 2 App. Cas. 215, 256.]

(*p*) *Eldridge v. Knott*, Cowp. 214.

<sup>1</sup> *German Am. Sem. v. Keifer*, 43 Mich. 105; *Wilmerding v. Russ*, 33 Conn. 67; *Best v. Campbell*, 62 Pa. St. 476; *Hawkins v. Chapman*, 36 Md. 100.

<sup>2</sup> In *Harmood v. Oglander*, 6 Ves. 199, 8 Ves. 106, the bill was filed after a lapse of *thirty-two years*, yet neither Lord Alvanley nor Lord Eldon considered the length of time to bar the plaintiff's demand; but in this case the parties were *equitable tenants in common*, and as between them the presumption of *ouster* did not arise.

Ground of  
the presump-  
tion.

(2). Presumptions are made, not necessarily because [ \* 870 ] the Court \* really believes what is presumed, but in the absence of evidence, for the purpose of quieting the possession (*q*)<sup>1</sup>. Lord Erskine observed, "It is said you cannot *presume* unless you *believe*. It is because there are no means of creating belief or disbelief, that such general presumptions are raised" (*r*). Where *positive* evidence can be presented to the Court, the fact may be presumed after a period much shorter than the usual one. And, on the other hand, though the distance of time may be far greater than the ordinary limit of presumption, yet if there appear any positive evidence to negative the fact, the legal inference cannot be sustained, for the rule is *stabit presumptio donec probetur in contrarium*. But the Court has judged it better for the ends of justice, that presumptions should be *favoured* in law, and should not be rebutted by slight evidence in contradiction (*s*)<sup>2</sup>.

Ignorance,  
mistake, and  
distress.

(3.) The Court cannot *presume* a person to have abandoned his right so long as he remains in *ignorance* of it, or labours under a *mistake* (*t*); and the *distress* of a person, so far as it accounts for his *laches* will *pro tanto* weaken the foundation of the presumption (*u*). So a release of right cannot with the same force be presumed against a *class of persons*, as against an individual; for it is not likely that a person having only an aliquot share in the property, should pursue his remedy with the same spirit, as if he were the exclusive proprietor (*v*).

(*q*) *Eldridge v. Knott*, Cowp. 215; *per* Lord Mansfield; and see *Grenfell v. Girdlestone*, 2 Y. & C. 682; *Magdalen College v. Attorney-General*, 3 Jur. N. S. 675.

(*r*) *Hillary v. Waller*, 12 Ves. 266.

(*s*) *Jones v. Turberville*, 2 Ves. jun. 13, *per* Lord Commissioner Eyre; and see *Grenfell v. Girdlestone*, 2 Y. & C. 662.

(*t*) See *Marquis Cholmondeley v. Lord Clinton*, 2 Mer. 362; *Randall v. Errington*, 10 Ves. 427; *Roche v. O'Brien*, 1 B. & B. 330, see 342; *Pickering v. Stanford*, 2 Ves. jun. 280, and following pages; *S. C.* Ib. 585; *Chalmer v. Bradley*, 1 J. & W. 65, and following pages; *Bennet v. Colley*, 2 M. & K. 232; *Stone v. Godfrey*, 5 De G. M. & G. 76.

(*u*) See *Roche v. O'Brien*, 1 B. & B. 342; *Hillary v. Waller*, 12 Ves. 266; *Gowland v. De Faria*, 17 Ves. 25; *Byrne v. Frere*, 2 Moll. 171, 178.

(*v*) See *Whichcote v. Lawrence*, 3 Ves. 752; *Anon. case*, cited *Lister v. Lister*, 6 Ves. 632; *Kidney v. Coussmaker*, 12 Ves. 158; *Hardwick v. Mynd*, 1 Anst. 109; *Attorney-General v. Lord Dudley*, G. Coop. 146; [*Boswell v. Coaks*, 27 Ch. D. 425, 457;] but see *Elliot v. Merriman*, 2 Atk. 42; *Hercy v. Dinwoody*, 2 Ves. jun. 87.

<sup>1</sup> *Hawkins v. Chapman*, 36 Md. 100.

<sup>2</sup> *Ames Iron Works v. West*, 24 Fed. Rep. 313.

III. Though the plaintiff's demand cannot be met by an *absolute bar*, and no release of right can be *presumed*; yet, thirdly, relief will not be granted where, if administered, it would lead to great public or private inconvenience (*w*)<sup>1</sup>.

Bar from public or private inconvenience.

(1.) Thus in an action for an account against an executor or administrator, who is in equity a *trustee*, and was formerly not \*protected by any statute [\* 871] of limitations (*x*), though the *presumption* of a final settlement may be rebutted by positive evidence, the Court will not open the account at any distance of time, when it is probable that most of the parties are dead, and the vouchers and receipts are lost (*y*)<sup>2</sup>.

In action for account a settlement may be presumed.

(2.) Where a suit was prosecuted after a delay of threescore and two years, Lord Keeper Wright said, that "the cause being now within one year of the grand climacteric, it was fit it should be at rest" (*z*). But bills have been dismissed at the end of twenty-seven years (*a*), and a much shorter period would be a sufficient bar, should the Court see a difficulty in granting the relief: every case must be determined with reference to its own particular circumstances (*b*).

Instances of great delay.

(3.) In *Pickering v. Lord Stamford* (*c*) a testator gave the residue of his personal estate to a charity; and thirty five years after his decease, the next of kin filed their bill for an account, and prayed that such part as consisted of money upon mortgage or other real securities, might be declared a void bequest, and distributable subject to debts, &c., among the testator's next of kin. Lord Alvanley said: "*I know no rule that has established that mere length of time will bar*. Therefore, that being the case, I am to say whether under the circumstances a bar can be *presumed*" (*d*). And for facilitating the question of presumption, his Lordship directed certain previous enquiries by the Master; and

*Pickering v. Stamford.*

(*w*) See *Attorney-General v. Mayor of Exeter*, Jac. 448.

(*x*) See now 3 & 4 W. 4, c. 27. s. 40; 23 & 24 Vict. c. 38, s. 13.

(*y*) *Hunton v. Davies*, 2 Ch. Rep. 44; *Huet v. Fletcher*, 1 Atk. 467; *Pearson v. Belchier*, 4 Ves. 627; *Hercy v. Dinwoody*, 2 Ves. jun. 87.

(*z*) *St. John v. Turner*, 2 Vern. 418.

(*a*) *Campbell v. Graham*, 1 R. & M. 453.

(*b*) See *Hercy v. Dinwoody*, 2 Ves. jun. 93; *Earl of Pomfret v. Lord Windsor*, 2 Ves. 483.

(*c*) 2 Ves. jun. 272.

(*d*) 2 Ves. jun. 283.

<sup>1</sup> Price's App. 54 Pa. St. 472; *McKnight v. Taylor*, 1 How. 161; *Piatt v. Vattier*, 9 Pet. 466.

<sup>2</sup> *Anderson v. Burwell*, 6 Gratt. 405.

it appearing from the report, that no release or assignment of their interest by the next of kin for the purposes of the charity could, under the circumstances, be presumed, his Lordship then had recourse to the ground of *Inconvenience*. The question, he observed, in all these cases is, whether there are motives of public policy or private inconvenience, to induce the Court to say, the suit ought not to be entertained. "If," said his Lordship, "from the plaintiff's lying by, it is impossible for the defendants to render the accounts he calls for, or it will subject them to great inconvenience, he must suffer; or the Court will oppose, what I think the best ground, *Public convenience*. The plaintiffs are so conscious of this, that they do not call on the trustees to account for what has been disbursed before any de- [\* 872] mand \* made. It appears that the trustees, who by their conduct have done themselves great credit, have kept such accounts that there is no difficulty in finding the personal estate at the death of the testator. Therefore, desiring to be understood by no means to give any countenance to these stale demands, but upon the circumstances that there is nothing inducing great public or private inconvenience, that the accounts are found, and that the trustees are not called on to account for what has been disbursed, I am bound to decide in favour of the plaintiffs" (e).

Bar from  
length of  
time.

(4.) The doctrine laid down by Lord Alvanley in the case referred to, that *mere length of time* will not bar, requires some qualification. Lapse of time or delay in suing, unaccounted for by disability or other circumstances, constitutes *per se* in the eye of a Court of equity, *laches* disentitling the plaintiff, in *certain classes of cases* at least, to relief from the Court. Thus where a plaintiff *cestui que trust* seeks to impeach a purchase by a trustee, a delay of less than twenty years may bar his title to relief (f). So where a plaintiff seeks to set aside a purchase from him by his solicitor (g), or of a reversionary interest (h), or to fix a defendant with a constructive trust (i), or to call a person to account for

(e) 2 Ves. jun. 582, and following pages.

(f) See the cases, p. 495, *supra*.

(g) See *Gresley v. Mousley*, 4 De G. & J. 78; and the cases there cited; and *Lyddon v. Moss*, Ib. 104.

(h) *Roberts v. Tunstall*, 4 Hare, 257.

(i) *Clegg v. Edmondson*, 8 De G. M. & G. 787; 3 Jur. N. S. 299; *Isald v. Fitzgerald*, cited Amb. 735, 737; and see *Pennell v. Home*, 3 Drew. 337; *Norris v. Le Neve*, 3 Atk. 38; *Jackson v. Welsh*, Ll. & G. Rep. t. Plunk. 346.



acts of waste (*k*), or comes to a Court of equity alleging a case of fraud as a ground for avoiding the operation of the Statute of Limitations (*l*)<sup>1</sup>. So where an account was sought by a surviving partner against the estate of a deceased partner, the Court, even assuming such case to fall within the exception as to merchants' accounts in the Statute of Limitations, refused its aid after a delay of thirteen years (*m*). And where the assistance of the Court is sought in a suit for specific performance (*n*), or in one partaking of that character (*o*), the rule is extremely strict. It is difficult to refer the refusal of the relief by the Court, in the instances mentioned, to any one general principle. In the cases of purchases by trustees, or of claims founded upon constructive trust, the probability of alteration of \*circumstances in regard to the property, and [\*873] the unfairness of the plaintiff in lying by, have weighed with the Court. Perhaps, the nearest approach to general principle will be found under the head of "Public Convenience"; "*Expedit Reipublicæ ut sit finis litium*" (*p*).

5. It has been pointed out that in *certain special cases* a delay of less than twenty years operates as a bar; and the Court in these instances departs still further from the analogy offered by the Statute of Limitations, by taking into account partly time which may have elapsed while the plaintiff's interest was reversionary (*q*). The question remains whether, *in general*, *laches* can be relied upon as a bar to a mere dry equitable demand falling within the purview of some or one of the Statutes of Limitations; and it seems that, the legislature itself having prescribed a term of limitation which it deems sufficiently short, the Court ought not further to abridge that term (*r*).

Bar from  
*laches*, where  
there is a  
Statute of  
Limitations.

(*k*) *Harcourt v. White*, 28 Beav. 303.

(*l*) *Blair v. Ormond*, 1 De G. & Sm. 428.

(*m*) *Tatam v. Williams*, 3 Hare, 347; and see *Harcourt v. White*, 28 Beav. 303.

(*n*) *Southcomb v. Bishop of Exeter*, 6 Hare, 213; *Alloway v. Braine*, 26 Beav. 575; *Sharp v. Wright*, 28 Beav. 150.

(*o*) *Hope v. Corporation of Gloucester*, 1 Jur. N. S. 320.

(*p*) See *Gresley v. Mousley*, 4 De G. & J. 95; *Carey v. Cuthbert*, 7 L. R. Eq. 542; 9 L. R. Eq. 330; *Payne v. Evans*, 18 L. R. Eq. 356.

(*q*) *Roberts v. Tunstall*, 4 Hare, 266; *Browne v. Cross*, 14 Beav. 105; but as to the latter case see observations of Turner, L. J. in *Life Association of Scotland v. Siddal*, 3 De. G. F. & J. 73.

(*r*) See *Rochdale Canal Company v. King*, 2 Sim. N. S. 89;

<sup>1</sup>And so in many similar cases where the party seeking relief fails to explain his delay; *Hawkins v. Chapman*, 36 Md. 100; *Badger v. Badger*, 2 Wall. 87

Acquies-  
cence.

(6.) Besides the bars which have been enumerated arising from the effect of time, a plaintiff may also be precluded from relief on the ground of *acquiescence*. This is of two kinds:—*First*, direct, where the Act complained of was done with a full knowledge and express approbation of another, in which case a Court of equity will not allow that other to seek relief against the very transaction to which he was himself a party (*s*). *Secondly*, indirect, where a person, having a right to set aside a transaction, stands by and sees another dealing with property in a manner inconsistent with that right, and makes no objection; when also a Court of equity will not relieve (*t*). But in the latter case, the Court not only looks to the conduct of the person [\* 874] who stands by, but also considers how far the person in possession of the property has any just claims to the protection of the Court. Where, for instance, the possessor lays out his money, with a full knowledge that the property which he improves belongs to another, then it is said he makes the outlay to his own cost. “If,” observes L. J. Turner, “a man places his property on the land of another with full knowledge of that person’s title, how can the fact that the landowner assented to its being placed there give an equity to have it restored? If it did, the doctrine would come to this, that whenever a man lays out money on another person’s land with the consent of the owner, he has an equity to have it repaid” (*u*).

[Where, however, the act complained of has been completed without any knowledge or assent on the part of the person seeking relief, there can be no acquiescence in the strict sense of the word, which has been “defined as quiescence under such circumstances as that as-

*Penny v. Allen*, 7 De G. M. & G. 426; *Mehrtens v. Andrews*, 3 Beav. 76; *Duke of Leeds v. Earl of Amherst*, 2 Ph. 117; *Clarke v. Hart*, 6 H. L. C. 633; *Beaudry v. Mayor, &c., of Montreal*, 11 Moore, P. C. C. 339; *Story v. Gape* 2 Jur. N. S. 706; [*Re Baker*, 20 Ch. D. 230.]

(*s*) See *Kent v. Jackson*, 14 Beav. 384; *Styles v. Guy*, 1 Mac. & G. 427; 1 Hall & Tw. 523; *Ex parte Morgan*, 1 Hall & Tw. 328; *Graham v. Birkenhead, &c., Railway Company*, 2 Mac. & G. 146.

(*t*) *Duke of Leeds v. Amherst*, 2 Ph. 123; *Phillipson v. Gatty*, 7 Hare, 523; *Stafford v. Stafford*, 1 De G. & J. 202; [*Simpson v. Simpson*, 3 L. R. Ir. 308;] and see *Jorden v. Money*, 5 H. L. C. 185. [It must however be borne in mind that where there is a legal right to set aside a transaction, as for instance a fraudulent conveyance under 13 Eliz. c. 5, mere delay to enforce it, unless the delay is such as to cause a statutory bar, is no defence; *Re Maddever*, 27 Ch. D. 523.]

(*u*) *Rennie v. Young*, 2 De G. & J. 136. see 142. See *ante*, p. 716.

sent may be reasonably inferred from it," and is no more than an instance of the law of estoppel by words or conduct. When once the act is completed without any knowledge or assent upon the part of the person whose right is infringed, a right of action has vested in him, which at all events as a general rule cannot be divested without accord and satisfaction or release under seal. Mere submission to the injury for any time short of the period limited by statute for the enforcement of the right of action cannot take away such right, although under the name of laches it may afford a ground for refusing relief under some particular circumstances (*v*).]

We may now introduce the late Acts for the limitation of actions and suits. Late Limitation Acts.

3. The 3 & 4 Will. 4, c. 27, enacts as follows:

Sect. 24: "No person claiming any *land* or *rent* in *equity* shall bring any suit to recover the same, but Lands and rents. within the period, during which by virtue of the provisions hereinbefore contained (*w*), he might have made an entry or distress, or brought an action to recover the same respectively, if he had been entitled at *law* to such estate, interest, or right in or to the same as he shall claim therein in equity" (*x*).

Sect. 25: When any land or rent shall be vested in a trustee \* upon any *express trust*, the right of [ \* 875] Express trusts. the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him (*y*), to recover such land or rent, shall be deemed to have first accrued, according to the meaning of the Act at, and not before, the time at which such land or rent shall have been conveyed to a purchaser for valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him" (*z*).

Sect. 26: "In every case of a *concealed fraud* the Fraud. right of any person to bring a suit in equity for the re-

[*(v)* Per L. J. Thesiger in delivering the judgment of the Court of Appeal, *De Bussche v. Alt*, 8 Ch. D. 286, 314; and see *post*, p. 922.]

*(w)* See 37 & 38 Vict. c. 57, s. 9, which from the commencement of the Act (1st January, 1879), varies the periods within which actions and suits may be brought.

*(x)* See *Scott v. Scott*, 12 Jur. 755; 4 H. L. Cas. 1065.

*(y)* As to the meaning of these words, see *Burroughs v. McCreight*, 1 Jon. & Lat. 304.

*(z)* Sums of money and legacies charged on land and secured by an *express trust*, are as from 1st January, 1879, made only recoverable within the time allowed for recovery, had there been no express trust; 37 & 38 Vict. c. 57, s. 10.

covery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before, the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered" (a).

Acquies-  
cence.

Sect. 27: "Nothing in the Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of equity in refusing relief, on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of the Act."

Arrears of  
rent or  
interest.

Sect. 42: "No *arrears of rent* or of *interest* in respect of any sum of money *charged upon*, or payable out of, any land or rent, shall be recovered by any action or suit, but within *six years* next after the same shall have become due, or after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent, signed by the person by whom the same is payable or his agent."

37 & 38 Vict.  
c. 37.

4. And the *Real Property Limitation Act*, 1874 (37 & 38 Vict. c. 57), enacts, that *from and after 1st January, 1879*:—

Sect. 1. No action or suit shall be brought to recover any land or rent but within *twelve years* from the time when the right first accrued.

Sect. 2. The right, as to *reversions, remainders, and future estates* shall be deemed to first accrue when they fall into possession.

But if the person entitled to the particular estate on which the future estate was expectant shall not have been in possession when his interest determined, the action or suit must be brought within twelve years from the time the first right accrued to the owner of the particular estate, or within six years from the time when the estate of the person becoming entitled in possession became vested in possession whichever of those two periods shall be the longer.

Sect. 3. In cases of disability, *six years* from the cesser of the disability or from the death of the person under disability shall be allowed, notwithstanding the expiration of the twelve years.

Sect. 4. No extension of time shall be allowed for *absence beyond seas*.

[\* 876] \* Sect. 5. No action or suit to recover any land shall be brought but within *thirty years* from the

---

(a) See *Manby v. Bewicke*, 3 K. & J. 342; *Petre v. Petre*, 1 Drew. 371; *Vane v. Vane*, 8 L. R. Ch. App. 383.

time when the right first accrued, notwithstanding the existence of any *disability* or succession of disabilities.

5. It results from these Acts that since 1st January, 1879, *twelve years'* possession is made a statutory bar to suits in *equity* in respect of *equitable* interests, as in the case of actions at law upon *legal rights* (b), but in case of *disability* a term of *six years* is allowed next after the cesser of the disability, subject to the proviso that no suit is to be brought after the lapse of thirty years from the accruer of the right, whatever disabilities may have existed.

6. The effect of the 25th section of 3 & 4 Will. 4, c. 27, is that, as between the trustee and any person claiming through him, and the *cestui que trust* and any person claiming through him, time does not run until there has been a conveyance to a purchaser for valuable consideration. The trust estate may, therefore, be followed by the *cestui que trust*, notwithstanding acquiescence by him (c), not only as against the trustee, but as against all volunteers claiming under him (d); but so soon as the estate is conveyed to a purchaser for valuable consideration (as if it be made the subject of a marriage settlement), the time begins to run (e); and a lease for value is *pro tanto* a conveyance within the meaning of the Act (f). No possession, however, by a purchaser for valuable consideration short of the statutory period will be a bar (g).

7. The question whether a lapse of the statutory period from the time of a conveyance for value by a trustee will bar *cestuis que trust*, who, by reason of *disability* or their rights being *reversionary*, would otherwise be entitled to sue after such period, is not free from difficulty. The 25th section of 3 & 4 W. 4, c. 27, enacts affirmatively that the right is to be deemed to have

Result of the Acts.

In case of express trust time runs from conveyance for value only.

And not even then as against persons under disability, &c.

[(b) The existence of a trust term, the trusts of which never actively arise, and under which possession is never taken, cannot be set up by the person entitled subject to the term as an answer to a defence founded upon the statute; *Twaddle v. Murphy*, 8 L. R. Ir. 123.]

(c) *Browne v. Radford*, W. N. 1874, p. 124.

(d) *Sturgis v. Morse*, 24 Beav. 541. 3 De G. & J. 1; *Heenan v. Berry*, 2 Jon. & Lat. 303; *Salter v. Cavanagh*, 1 Dru. & Walsh, 668; *Blair v. Nugent*, 3 Jon. & Lat. 658, 9 Ir. Eq. Rep. 400; *Ravenscroft v. Frisby*, 2 Coll. 16; *Massy v. O'Dell*, 10 Ir. Ch. Rep. 22; *O'Reilly v. Walsh*, 6 I. R. Eq. 555; and see *Dixon v. Gayfer*, 17 Beav. 421; *Mutlow v. Bigg*, 18 L. R. Eq. 246.

(e) *Petre v. Petre*, 1 Drew. 371.

(f) *Attorney-General v. Davey*, 4 De G. & J. 136; *Attorney-General v. Payne*, 27 Beav. 168.

(g) *Attorney-General v. Flint*, 4 Hare, 147. But see *Carey v. Cuthbert*, 7 I. R. Eq. 542; 9 I. R. Eq. 330.

accrued at the time of conveyance, and this, in strict construction, would seem to work an independent bar. [\*877] But this section is merely a proviso on \* the 24th section, which is in effect an enactment *restraining* the right to sue in *equity* within the limits allowed for suits at *law*; and the 25th section would appear to be not a further *restraint* of the right to sue, but an *enlargement*, by way of *modification* of the restriction previously introduced by the 24th section. The decisions and *dicta* accord with this view and point to the conclusion that a *cestui que trust*, who is a remainderman, or under disability, is entitled to the full statutory period from the accruer of the right in possession, or from the cesser of the disability, as the case may be, notwithstanding the trustee may have conveyed away the estate for value, and the twenty or twelve years, as the case may be, may have elapsed from the date of conveyance, but in no case must the period allowed now exceed thirty years, from the accruer of the right in possession (g).

Express trusts.

8. The 25th section applies only to *express trusts*; it is therefore necessary to ascertain with precision what is meant by this phrase. Trusts, *as regards the provisions of the statute*, may be considered as divided into express trusts and constructive trusts; the former arising upon the language of some written instrument, and the latter such as are elicited by the principles of a Court of equity from the acts of parties.

Word "trust" not necessary to constitute an express trust.

9. It is not necessary to use the word *trust* in order to create an express trust within the meaning of the statute (h), but any language that would in equity raise or imply a trust will be deemed an express trust. If, therefore, land be devised to a person upon trust to receive the rents and thereout to pay certain annuities, the surplus rents result to the heir-at-law upon the face of the instrument, and this being an express trust, the heir-at-law is not barred by any length of possession by the trustee (i).

(g) *Thompson v. Simpson*, 1 Dru. & War. 489; *Attorney-General v. Magdalen College*, 18 Beav. 239, 250; 6 H. L. Cas. 189, see p. 215; *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 58; *Shaw v. Keighron*, 3 I. R. Eq. 574; and see *Butler v. Carter*, 5 L. R. Eq. 276; *Quinton v. Frith*, 2 I. R. Eq. 396.

(h) *Commissioners of Charitable Donations v. Wybrands*, 2 Jon. & Lat. 197.

(i) *Salter v. Cavanagh*, 1 Dru. & Walsh, 668; and see *Commissioners of Charitable Donations v. Wybrands*, 2 Jon. & Lat. 196; 7 Ir. Eq. Rep. 580; *Mutlow v. Bigg*, 18 L. R. Eq., 246, [reversed on other grounds, 1 Ch. D. 385.] In *Lord St. John v. Boughton*, 9 Sim. 223, where there was an express trust to sell and pay

10. But trusts arising by the construction of a Court of equity \* from the *acts of parties*, or to be [ \* 878 ] made out by *circumstances*, or to be proved by *evidence*, will not be saved by the clause relating to express trusts, as if the devisee for life of a leasehold estate renew in his own name, the statute will begin to run from the time of the renewal (*k*). So if a trust fund be lent to A., and thereupon B. as surety with notice of the trust gives a mortgage of his estate to secure the fund, here B. is not an express trustee; and if no interest be paid for the statutable period, the *cestui que trust* is barred (*l*). [So where the first mortgagee of a ship sold the ship under the power conferred by the Merchant Shipping Act (17 & 18 Vict. c. 104), it was held that he was not an express trustee of the surplus proceeds of sale for the subsequent mortgagee (*m*).] But if there be an express trustee, and another person with full knowledge of the trust and in collusion with the trustee, and therefore by active fraud, appropriates the property to his own use, he stands in the place of the trustee, and while the fraud remains concealed the statute does not run (*n*). If a person act as the trustee of a settlement containing express trusts, though he assume the character by mistake, he will be deemed, so far as he acts, an express trustee (*o*).

11. Mere *charges* might have been held to fall under the description of express trusts, but that they are dealt with under a separate section, viz., the 40th of 3 & 4 W. 4, c. 27 (for which as from 1st January, 1879, is now substituted the 8th section of 37 & 38 Vict. c. 57), a circumstance which shows that they were meant to be distinguished from express trusts. If, therefore, a testator, having two properties, A. and B., *charged* all his real estate with his *debts*, and devised estate A. to trustees upon *trust* to pay his debts, the statute as to estate

debts, the late V. C. E. thought that as *no part of the produce of the sale had been set apart for debts*, the case was not within the exception of the 25th section, but fell under the 40th section, and that if there had been no subsequent acknowledgment of the debt, it could not have been recovered. This, it is conceived, cannot be maintained. However, it was a dictum only, as the bonds were directed to be paid on the ground of acknowledgment; see *Watson v. Saul*, 1 Giff. 197.

(*k*) *Petre v. Petre*, 1 Drew. 371; *Re Scott*, 8 Ir. Ch. Rep. 316; In the matter of *P. Dane*, 5 I. R. Eq. 498.

(*l*) *Re Scott*, 8 Ir. Ch. Rep. 316.

[(*m*) *Banner v. Berridge*, 18 Ch. D. 254.]

(*n*) *Rolfe v. Gregory*, 4 De G. J. & S. 576.

(*o*) *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 58; and See *Smith v. Smith*, 10 I. R. Eq. 273; 1 L. R. Ir. 206.

B, [was] made a bar under 3 & 4 Will. 4, c. 27, after twenty years, (and under 37 & 38 Vict. c. 57, [is a bar] after twelve years), but as to estate A. it [did] not [before 1st January, 1879] begin to run until a conveyance to a purchaser, for valuable consideration (*p*); [but by the 10th section of 37 & 38 Vict. c. 57, the time for recovering any money payable out of land is made the same, whether it is secured by an express trust or not.] So, if an estate be devised to A., *charged* with 1000*l.* in [\* 879] favour of \*B., or "A. *paying* 1000*l.* to B.," [or "on the condition of A. well and truly paying £1000 to B." (*q*),] although a suit may be sustained in equity to have the sum raised on the footing of a trust, yet it is not an express trust within the meaning of the statute, and [will, therefore, independently of sect. 10 of 37 & 38 Vict. c. 57,] be now barred at the end of twelve years (*r*). And if a testator charge his debts and direct his executors to raise them by mortgage or otherwise, the direction adds nothing to the charge (which *per se* authorized the raising of the debts by mortgage or otherwise); and no express trust, but only a charge, is created (*s*).

Charge coupled with a duty.

12. But a charge in form may be an express trust in fact. Thus where an estate in Ireland was devised to trustees and their heirs, upon trust to *convey* to J. W. for life *charged* with annuities to certain corporations for charitable purposes, although the corporations were interposed as trustees, yet, as the devisees were bound to execute a settlement, so as to secure the annuities and retain the legal estate in the meantime, they were, until the settlement had been executed, trustees for the charity (*t*). So, though a simple charge of the testator's debts fell within the 40th section of 3 & 4 W. 4, c. 27, and the creditor was barred after twenty years (*u*), yet, if the will was so worded as to impose

(*p*) *Jacquet v. Jacquet*, 27 Beav. 332; *Proud v. Proud*, 32 Beav. 235.

[(*q*) *Cunningham v. Foot*, 3 App. Cas. 974.]

(*r*) *Knox v. Kelly*, 6 Ir. Eq. Rep. 279; *Toft v. Stephenson*, 7 Hare, 1; *Hodge v. Churchward*, 16 Sim. 71; *Francis v. Grover*, 5 Hare, 39; *Hughes v. Kelly*, 3 Dru. & War. 482; [*Cunningham v. Foot*, 3 App. Cas. 974:] and see *Harrison v. Duignan*, 2 Dru. & War. 295.

(*s*) *Dickinson v. Teasdale*, 31 Beav. 511; 1 De G. J. & Sm. 52.

(*t*) *Commissioners of Charitable Donations v. Wybrants*, 2 Jon. & Lat. 182, 7 Ir. Eq. Rep. 580.

(*u*) *Dundas v. Blake*, 12 Ir. Eq. Rep. 138, and cases there cited. The 40th section, as from 1st January, 1879, has been repealed by 37 & 38 Vict. c. 57, s. 9. See the 8th section of the latter Act.



on the devisees subject to the charge the *personal obligation* of exerting themselves actively in paying the debts, it became an express trust and fell within the exception of the 25th section (v).

13. A charge upon an estate may under the same instrument be a mere charge as between some parties, while it is an express trust within the 25th section as between other parties. If, for instance, an estate be devised to A. and his heirs, subject to a charge of 500*l.* to B. and C. upon certain trusts, this, as between A. and the two trustees, is a mere charge, and would be barred after twenty or twelve years, as the case may be, but, as between the two trustees and their *cestuis que trust*, the charge when raised will be an express \*trust, and the time of the bar as between [\* 880] them will be extended accordingly.

Charge and express trust in same matter.

14. If a *term of years* be limited to trustees for the purpose of securing the charge, the rights of the *cestuis que trust* will not be barred so long as the term vested in their trustees remains unbarred (w).

Case of charge secured by a term of years.

15. A *mortgage by way of trust for sale* is nothing more than a mortgage with a power of sale, and does not come under the description of an express trust within the meaning of the 25th section (x). [A mortgagee, after his mortgage debt has been fully paid, is not an express trustee of the mortgaged property until reconveyance (y).]

Mortgage by way of trust.

16. To make the Act operate as a bar to a charge there must be a *hand to receive*, and capable of signing a receipt; as if 400*l.* be charged by deed on an estate, and by the same deed it is assigned to trustees upon trust for A. and B. for their lives, and after the death of the survivor for their children, but no power of signing receipts is given to the trustees, and, on the contrary, the Court collects the intention that the trustees are not to raise the money till after the death of the surviving tenant for life, the statute does not begin to run until the latter period (z).

Charge must be presently raisable.

(v) *Hunt v. Bateman*, 10 Ir. Eq. Rep. 360, and cases there cited; *Watson v. Saul*, 1 Giff. 188; and see *Burrowes v. Gore*, 6 H. L. Cas. 907.

(w) *Young v. Lord Waterpark*, 13 Sim. 202; on appeal 15 L. J. N. S. Ch. 63; *Cox v. Dolmen*, 2 De G. M. & G. 592; and see *Ward v. Arch*, 12 Sim. 472.

(x) *Locking v. Parker*, 8 L. R. Ch. App. 30; [*Re Alison*, 11 Ch. D. 284.]

(y) *Sands to Thompson*, 22 Ch. D. 614.]

(z) *M'Carthy v. Daunt*, 11 Ir. Eq. Rep. 29. Assuming that the trustees could not sign a receipt, the decision was right; but it was a bold step to say that the trustees had not such a power.

Persons  
claiming  
through the  
trustee.

17. It will be observed that, by the 25th section of 3 & 4 Will. 4, c. 27, the *cestui que trust* and any person claiming through him may enforce the trust against the trustee and any person claiming through him (a), but both trustee and *cestui que trust* may be ousted by the intrusion of a third title, and if so, the statute will begin to run from the dispossession of the trustee and *cestui que trust*. Thus, in 1810, a legal estate was vested in trustees upon trust for five tenants in common, but from 1819 to the filing of the bill in 1842, four of the tenants in common received the rents to the exclusion of their co-tenant and of the trustees, who never executed their duty; and it was held that there had been an ouster of both trustees and *cestui que trust*, and that the right of such *cestui que trust* was barred by the statute (b).

Possession by  
one of the  
*cestui que*  
*trust*.

[\* 881] \* 18. A *cestui que trust* in actual possession is tenant at will to his trustee (c), and the 7th section of the Act enacts that "when any person shall be in possession as tenant at will, the right of the person entitled subject thereto to make an entry shall be deemed to have first accrued at the determination of such tenancy, or at the expiration of one year from the commencement of such tenancy. Provided that no *cestui que trust* shall be deemed to be a tenant at will within the meaning of the clause to his trustee." The exception was introduced in relief the trustee that he might not be obliged to take active steps lest the tenancy at will should be deemed to have expired, and so the statute should begin to run. In other words, the tenancy should not be determined at the end of one year (d). The statute, therefore, does not run against the trustee so long as the *cestui que trust* is in actual possession. [A mortgagor, where the mortgage debt has been fully paid but no reconveyance has been made, is a tenant at will of the mortgagee, but is not a *cestui que trust* of the mortgagee within the meaning of the proviso, and time therefore runs against the mortgagee, and after more

---

And see Attorney-General v. Persse, 2 Dru. & War. 67; Carroll v. Hargrave, 5 I. R. Eq. 123; and see *post*, p. 885.

(a) See cases, p. 876, note (c), *supra*.

(b) Burroughs v. M'Creight, 1 Jon. & Lat. 290, 7 Ir. Eq. Rep. 49; [Bolling v. Hobday, 31 W. R. 9;] and see Commissioners of Donations v. Wybrants, 2 Jon. & Lat. 198; Re Birmingham, 4 I. R. Eq. 187; Knight v. Bowyer, 2 De G. & J. 440.

(c) See *ante*, Chap. xxvi s. 1.

(d) See the observations of Wilde, C. J., in Garrard v. Tuck, 13 Jur. 873.

than thirteen years, his legal estate will be extinguished (e).]

And it has been laid down, that if the *cestui que trust* be let into possession as *tenant at will* to the trustee, the tenancy is not determined by the *cestui que trust* sub-letting to an under-tenant, unless the trustee had notice of such underletting, for, though the general rule is that a tenancy at will is not *assignable*, yet the rule is subject to the qualification that a tenant at will cannot determine his tenancy by transferring his interest to a third party without notice to his landlord (f).

But if the *cestui que trust* be not the *actual occupier*, but only in receipt of the rents and profits, he is not tenant at will to the trustee, but the possession remains with the trustee, and the *cestui que trust* is the trustee's bailiff or agent for the management of the estate, and therefore if the *cestui que trust* allow any tenant of the trust estate to hold for twelve years, without paying rent or other acknowledgment of title, the statute runs against the trustee through the default of his bailiff or agent (g). The trustee, \* therefore, who puts [\* 882] a *cestui que trust* in receipt of the rents and profits has a duty to perform, and may be held responsible for a loss accruing through neglect in not looking after his bailiff or agent.

19. If *actual possession* be held by the trustee of an *Cestui que* express trust who has the *legal estate*, but who mistakes his *cestui que trust* and pays the rents to a wrong person, the possession of the trustee is the possession of the rightful *cestui que trust*, and the wrongful recipient of the rents does not acquire a title by adverse possession under the statute (h), and this principle is of very extensive application, for, as we have seen, where a *cestui que trust* is put into receipt of the rents and profits, the possession is still that of the trustee, and the *cestui que trust* is regarded in the light of the bailiff or agent of the trustee. But it is always a question for the jury, or the Court sitting as a jury, to say whether the *cestui que trust* was in receipt of the rents as *bailiff* or *agent* of the trustee, or was in receipt of the rents as claiming the beneficial ownership independently of the

[(e) *Sands to Thompson*, 22 Ch. D. 614.]

(f) *Melling v. Leak*, 1 Jur. N. S. 760, per Gresswell, J. The *alienee* cannot be deemed tenant at will of the trustees without some acknowledgment by them; *Doe d. Stanway v. Rock*, 4 Man. & G. 30.

(g) *Melling v. Leak*, 16 C. B. 652; 1 Jur. N. S. 759.

(h) *Lister v. Pickford*, 34 Beav. 576.

trustee. In the former case the statute of limitations would not run, but in the latter case it would (*i*).

Disseisin by  
*cestui que*  
*trust*.

20. If *cestui que trust* under a will hold adverse possession of an estate supposed to pass, but which did not in fact pass by the will to a trustee, and eventually the true owner is barred, the legal estate gained by the *disseisin* vests in the trustee of the will, under colour of which the possession was taken, and not in the *cestui que trust* (*k*).

42nd section.

21. The 42nd section of the Act, limiting the recovery of arrears of rent or interest to the last six years only, has no application to cases of express trusts within the 25th section, but the *cestui que trust* could, prior to the 1st of January, 1879, have recovered from his trustees the whole arrearages from the commencement of the title (*l*).

[Subsisting  
term.]

22. And where there was a subsisting term not barred, upon which the trustee might obtain *possession*, the whole arrearages [could, prior to the 1st of January, 1879, have been] recovered (*m*).

Cox v.  
Dolman.

[\* 883] \* Thus, in *Cox v. Dolman* (*n*), a testator devised his lands to the use of trustees for ninety-nine years upon trust to pay certain annuities, and subject thereto to the use of S. Cox for life, with remainder over; and after the death of S. Cox, one of the annuitants filed a bill to have the arrears of the annuity raised out of the estate. The executors of S. Cox pleaded the statute as a bar to more than six years' arrears, but the Court held that it was the case of an express trust, and that the tenant for life had taken possession subject to the trust, and that the term was a subsisting one,

(*i*) As in *Burroughs v. McCreight*, 1 Jon. & Lat. 290, where the statute was effectually pleaded "not by persons who had placed themselves in the shoes of the trustees, but by persons who, in spite of the trustees, had received the rents for upwards of twenty years for their own benefit," *Ib.* 305; and see *Cholmondeley v. Clinton*, *ante*, p. 723; *Parker v. Carter*, *ante*, p. 734.

(*k*) *Kernaghan v. M'Nally*, 12 Ir. Ch. Rep. 89; *Hawksbee v. Hawksbee*, 11 Hare, 230; and see *Paine v. Jones*, 18 L. R. Eq. 329.

(*l*) *Playfair v. Cooper*, 17 Beav. 187; *Gough v. Bultf.* 16 Sim. 323; *Watson v. Saul*, 1 Giff. 200; *Sturgis v. Morse*, 3 De G. & J. 1; 24 Beav. 541; *Gyles v. Gyles*, 9 Ir. Ch. Rep. 135. And see *Wright v. Chard*, 4 Drew. 680.

(*m*) *Cox v. Dolman*, 2 De G. M. & G. 592; *Snow v. Booth*, 2 K. & J. 132; 8 De G. M. & G. 69; *Lewis v. Duncombe* (No. 2), 29 Beav. 175; *Lawton v. Ford*, 2 L. R. Eq. 97; *Earl of Mansfield v. Ogle*, 1 Jur. N. S. 414; *Re Wyse*, 4 Ir. Ch. Rep. 297; *Re Birmingham*, 4 Ir. Rep. Eq. 187, 9 I. R. Eq. 385; *Re Murphy*, 5 Ir. Rep. Eq. 147.

(*n*) 2 De G. M. & G. 592.

upon which the trustees might at any time have recovered, and the plaintiff was declared entitled to the whole arrears, which were to be paid out of the assets of the tenant for life up to the day of his death, and since his death by the remainderman. The direct remedy was, no doubt, to have the whole arrears raised by sale or mortgage of the term, but as the remainderman would be entitled to recover the arrears that accrued in the lifetime of the tenant for life from his estate, the Court, to avoid circuitry, decreed payment at once out of the tenant for life's assets.

[23. Under 37 & 38 Vict. c. 57, s. 10, as from the 1st [37 & 38 Vict. c. 57, s. 10.] of January, 1879, no action, suit or other proceeding may be brought to recover any arrears of rent or of interest in respect of any sum of money or legacy charged upon or payable out of any land or rent, and secured by an *express trust*, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust (o). Thus where an annuity which was secured by an express trust had been unpaid for twenty-five years, and no claim of any sort was made in respect of the annuity during that period, it was held that no *arrears* of the annuity, accrued before a claim for the annuity was made, could be recovered from the property charged; for the remedy for the arrears was the same as if there had been no express trust, in which case they would have been irrecoverable; but the section did not affect the right to future payments of the annuity (p). It may be doubted whether this was correctly decided, for the annuity itself was admittedly still subsisting; and by the 42nd section of 3 & 4 W. 4, c. 27, six years' arrears of such an annuity are recoverable without any express trust; and the 10th section of the Act of 1874, contemplates the existence of some period \*dur- [\*884] ing which the arrears could have been recovered. The intention of the section seems to have been to limit the period during which the arrears are to be recoverable, and not to destroy the right to recover any arrears, and it hardly seems to justify the argument that as, in the absence of an express trust, the annuity itself would have been barred by the statute, and therefore no arrears of the annuity could in that case have been recoverable, no arrears are recoverable though the annuity is still subsisting.]

24. It was at first doubted whether charities were not Charities.

(o) See *post*, p. 885.

[(p) *Hughes v. Coles*, 27 Ch. D. 231.]

altogether unaffected by the Act of 3 & 4 W. 4, c. 27, inasmuch as, by a special exception in their favour, Courts of equity did not oppose to charitable, as they did to ordinary equitable claims, a bar by analogy to the old Statutes of Limitation, and the Act of W. 4, contained no express mention of charities (*q*); but it was afterwards held that they were within the operation of the 24th section, though they might be protected by the 25th section relating to express trusts (*r*); and the law was ultimately so settled in the case of *Attorney-General v. Magdalen College* (*s*) on appeal to the House of Lords.

Legacy.

25. A *legacy* cannot be recovered under 37 & 38 Vict. c. 57, after twelve years. But if the executor assent to the legacy, he then becomes a trustee, and the statute does not run (*t*); and *à fortiori* if the legacy be coupled with a trust as for the separate use of a *feme covert*, the executor, after assent to the trust, is converted into a trustee (*u*); and if a legacy be given to A. for life with remainder to his children, and the circumstances are such that during the life of A. there is no hand entitled to receive it, the time does not run against the children during the life of A. (*v*).

Residue or  
share or  
residue.

26. The 8th section of 37 & 38 Vict. c. 57, is, as from 1st January, 1879, substituted for the 40th section of 3 & 4 W. 4, c. 27, and it is presumed that under the substituted as under the original section the limited period will by a liberal construction of the word *legacy* be held to be a bar to suits also in respect of a *residue* or share of residue (*w*).

23 & 24 Vict.  
c. 38, s. 13.

[\* 885] \*27. The 40th section of 3 & 4 W. 4, c. 27, did not extend to the case of *intestacy*, and by 23 & 24 Vict. c. 38, s. 13, no suit or other proceeding can be brought to recover personal estate or any share thereof from the personal representative of any *intestate* but within twenty years after the accruer of the right, unless there has

(*q*) *Incorporated Society v. Richards*, 1 Dru. & War. 287, 288.

(*r*) *Commissioners of Charitable Donations v. Wybrants*, 2 Jon. & Lat. 182, 7 Ir. Ev. Rep. 580.

(*s*) 18 Beav. 223; 6 H. L. Cas. 189; *Attorney-General v. Davey*, 19 Beav. 521, 4 De G. & J. 136; *Attorney-General v. Payne*, 27 Beav. 168.

(*t*) *Phillipo v. Munnings*, 2 M. & Cr. 309; *O'Reilly v. Walsh*, 6 Ir. Eq. 555.

(*u*) *Hartford v. Power*, 2 Ir. Rep. Eq. 204.

(*v*) *Carroll v. Hargrave*, 5 Ir. Eq. 123; see *ante*, p. 880, note (*d*).

(*w*) *Prior v. Horniblow*, 2 Y. & C. 201; *Christian v. Devereux*, 12 Sim. 264; [*Sutton v. Sutton*, 22 Ch. D. 511, 517;] and see *Payne v. Evens*, 18 L. R. Eq. 356; *Carey v. Cuthbert*, 7 I. R. Eq. 542.

been part payment or some acknowledgment in writing. The 8th section of 37 & 38 Vict. c. 57, appears not to extend to the case of an *intestacy*, and if so, a legatee will under the latter section be barred after twelve years, while the *next of kin* will not be barred until after twenty years. (x).

28. The right of the legatee or next of kin may be barred as to assets received more than the prescribed period before the commencement of the suit, but not barred as to assets received since (y). Assets subsequently received.

29. By 36 & 37 Vict. c. 66, s. 25, subs. 2, it is enacted that "no claim of a *cestui que trust* against his trustee (z) for any property held on an *express trust*, or in respect of any *breach of such trust*, shall be held to be barred by any statute of limitations." The 37 & 38 Vict. c. 57, s. 10, enacts that from 1st January, 1879, no money or legacy charged on any land or rent shall, though secured by an *express trust*, be recoverable, except within the time within which it might have been recovered had there been no express trust. 36 & 37 Vict. c. 66, s. 25. 37 & 38 Vict. c. 57, s. 10.

The former of these two Acts applies as between *trustee* and *cestuis que trust*, while the latter applies as between the *land charged* (though secured by way of trust) and the persons entitled to the charge (a).

*Thirdly.* We have to enquire to what extent a Court of equity upon recovery of the estate, will direct an account against the defendant of the mesne rents and profits. Account of mesne rents and profits.

The right of the *cestui que trust* to an account of mesne rents and profits cannot very well be treated of without entering generally into the principles upon which relief in a Court of equity, in respect of mesne rents and profits, is founded.

An account of rents and profits may be sought in equity, either (I.) *Independently* of relief respecting the *corpus* of the land, or (II.) *As incident or collateral* to it.

\* *First.* Where the account is sought *independently* of other relief. [ \* 886 ] Account may be had against an express trustee without reference to the Statutes of Limitation.

1. If the account be sought against an *express trustee*, then, as the Statutes of Limitation do not run between

[ (x) *Sutton v. Sutton*, 22 Ch. D. 511, 517.]

[ (y) See *Adams v. Barry*, 2 Coll. 290.

[ (z) In *Seagram v. Tuck*, 18 Ch. D. 296, Kay, J. was of opinion that a receiver appointed by the Court was a trustee of money received by him so as not to be able to avail himself of the statute of limitations.]

[ (a) *Fearnside v. Flint*, 22 Ch. D. 579; *Hughes v. Coles*, 27 Ch. D. 231.]

trustee and *cestui que trust*, it will be directed from the time the rents were withdrawn (b).

Account in equity could not be had in respect of a legal title.

Except the account were complicated, &c.

Or the plaintiff was an infant.

2. If the claim to the rents rest upon a *legal* title, the plaintiff has then a *legal* remedy, and under the old practice could not have come into a Court of equity at all (c); except in cases where, from the complicated nature of the accounts, or other particular circumstances, a Court of law would have afforded very inadequate relief (d). But an *infant* might have filed a bill for an account upon a legal title (e); as every person entering upon an infant's lands is regarded in the light of a bailiff or receiver for the infant (f); but the rule did not apply where the infant had never had possession, but it had been held by an adverse party (g). The jurisdiction against a person entering during the infant's minority remained, though the bill were not filed until after the infant attained twenty-one (h). But after six years the Statute of Limitations would be a bar (i). And generally all persons might have an account upon a legal title in respect of *mines*, which are a species of trade (k), but not of *timber*, without paying an injunction (l).

Or in the case of mines. Or timber.

Whether after the death of the pignor an account

3. Although where a remedy lay at law an account could not be had in equity against the *pernor* of the profits himself, yet, after his decease, the party entitled

(b) See *Attorney-General v. Brewers' Company*, 1 Mer. 498; *Mathew v. Brise*, 14 Beav. 341.

(c) *Jesus College v. Bloome*, 3 Atk. 262; and see *Dinwiddie v. Baily*, 6 Ves. 136; *Taylor v. Crompton*, Bunb. 95; *Lansdowne v. Lansdowne*, 1 Mad. 137.

(d) See *O'Connor v. Spaight*, 1 Sch. & Lef. 309; *Corporation of Carlisle v. Wilson*, 13 Ves. 276.

(e) *Gardiner v. Fell*, 1 J. & W. 22; *Roberdeau v. Rous*, 1 Atk. 543; *Yallop v. Holworthy*, 1 Eq. Ca. Ab. 7; *Newburgh v. Bickerstaffe*, 1 Vern. 295; *Curtis v. Curtis*, 2 B. C. C. 631, *per Cur.*

(f) *Dormer v. Fortescue*, 3 Atk. 130, *per Lord Hardwicke*; *Pulteney v. Warren*, 6 Ves. 89, *per Lord Eldon*; *Morgan v. Morgan*, 1 Atk. 489; *Lord Falkland v. Bertie*, 2 Vern. 342, *per Cur.*; *Dee v. Keen*, 7 T. R. 390, *per Lord Kenyon*; *Hicks v. Sallitt*, 3 De G. M. & G. 782; *Pascoe v. Swan*, 27 Beav. 508.

(g) *Crowther v. Crowther*, 23 Beav. 305. But see the observations of V. C. in *Quinton v. Frith*, 2 I. R. Eq. 414.

(h) *Blomfield v. Eyre*, 8 Beav. 250; *Hicks v. Sallitt*, *ubi supra*.

(i) *Lockey v. Lockey*, Pr. Ch. 518, and see *Knox v. Gye*, 5 L. R. H. L. 674.

(k) *Bishop of Winchester v. Knight*, 1 P. W. 406; and see *Pulteney v. Warren*, 6 Ves. 89; *Lansdowne v. Lansdowne*, 1 Mad. 116; *Parrott v. Palmer*, 3 M. & K. 632.

(l) *Jesus College v. Bloome*, 3 Atk. 262; *Higginbotham v. Hawkins*, 7 L. R. Ch. App. 676; and see *Pulteney v. Warren*, 6 Ves. 89; *University of Oxford v. Richardson*, Ib. 701; *Grierson v. Eyre*, 9 Ves. 346; but see *Garth v. Cotton*, 1 Dick. 211; *Lee v. Alston*, 1 B. C. C. 194.



to the profits might have considered himself a *creditor*, might be had and have filed a bill in equity for an *account of the* in equity *assets* (l). against his executor.

\*4. Where, as in the preceding cases, a [\* 887] The account Court of equity assumed a concurrent jurisdiction with in these Courts of law, the account was not extended beyond cases confined to the legal limit of six years, provided the statute were to the legal pleaded: it was otherwise, if the defendant did not limit. avail himself of the statute by demurrer, plea, or answer (m).

[5. Now, by the recent Judicature Acts the several [Present Divisions of the High Court of Justice, have co-ordi- practice.] nate jurisdiction, and matters of account are assigned to the Chancery Division of the Court (n), and it is conceived that the same limit of time will apply to the account as formerly prevailed in the Court of Chancery, and the statute of limitations cannot be relied upon unless pleaded by the defendant (o).]

6. It often happens that a legal remedy *did* exist, but Where a has since by the death of a party or the determination legal remedy of the estate, become extinguished. In such a case, as did exist but the right *was not*, but only *is*, without a remedy at law, has expired, there seems no ground in general for the interference equity will not assist. of a Court of equity (p).

7. But if the remedy was lost through *mistake*, the Unless there Court upon that principle may interpose: as where a be mistake. lease was held for the lives of A. and his two daughters B. and C., and A. afterwards married again, and had another daughter, who was also named B., and the landlord on the expiration of the lease by the death of the real *cestui que vie*, did not enter (B. the daughter by the second marriage being mistaken for B. the life named in the lease) Lord Macclesfield said, "Where one has title of entry, and neglects to enter or to bring his ejectment, but sleeps upon it for several years, *as he has no remedy at law for the mesne profits*, so *neither has he in equity*, for it was his own fault he did not enter, and he shall never come into a Court of equity for

(l) *Money Penny v. Bristow*, 2 R. & M. 117, (but the bill also prayed delivery of title deeds); *Gardiner v. Fell*, 1 J. & W. 22 (but the plaintiff was also an infant); and see *Thomas v. Oakley*, 18 Ves. 186; *Ladnsdowne v. Landsdowne*, 1 Mad. 116.

(m) See *Monypenny v. Bristow*, 2 R. & M. 125.

(n) 36 & 37 Vict. c. 66, s. 34.]

(o) See Rules of the Supreme Court, 1883, Order 19, Rule 15.]

(p) *Barnewall v. Barnewall*, 3 Ridg. P. C. 71, *per* Lord Fitzgibbon; *Hutton v. Simpson*, 2 Vern. 722; *Norton v. Frecker*, 1 Atk. 525, 526, *per* Lord Hardwicke; and see *Pulteney v. Warren*, 6 Ves. 88.

relief against his own negligence, or to make the tenant in possession who held over his lease to be but his bailiff or steward, whether he will or not; but in the present case, *by reason of the circumstance of both daughters being of the same name, and the mistake consequent thereon*, the defendant must account for the mesne profits from the expiration of the lease" (q).

Or fraud.

[\* 888] \* 8. So equity will relieve where the remedy was prevented by *fraud*: as where A. was entitled to a leasehold estate, but B., concealing the deeds, remained in possession until the term had expired, Lord King directed an account of the rents and profits from the time that A.'s title accrued, on the ground that A. had been kept in ignorance of his just rights through B.'s fraudulent concealment of the deed and counterpart (r).

Or some default in the defendant.

9. And generally the Court will in all cases lend its aid where the legal process has been lost, not by any delay on the part of the plaintiff, but through *some default* of the defendant (s).

*Secondly.* An account may be sought as *incident or collateral* to relief. The doctrines upon this subject were very distinctly laid down by Lord Fitzgibbon, afterwards Lord Clare, in *Barnewall v. Barnewall* (t).

Plaintiff recovering the estate on an equitable title.

A.—1. "The general rule of equity," he said, "is, that if the suit for recovery of possession be properly cognisable in a Court of *equity*, and the plaintiff obtains a decree, the Court will direct an account of rents and profits, as incident to such relief."

Where *cestui que trust* follows trust estate into hands of a volunteer claiming under a trustee.

2. In the case of a *cestui que trust*, who is following the trust estate into the hands of a person *claiming through the trustee*, under such circumstances that the defendant is himself to be regarded as a trustee, it is clear that the *cestui que trust*, by establishing his claim to the land, has thereby established a right to the mesne rents and profits from the very commencement of his title (u). And *à fortiori* the rule is so where the plaintiff has been under the disability of infancy during

(q) *Duke of Bolton v. Deane*, Pr. Ch. 516. (Note, in this case Lord Hardwicke thought a remedy still existed at law, *Dormer v. Fortescue*, Ridg. Rep. t. Hardwicke, 190; but Lord Macclesfield was evidently of a different opinion, and so was Lord Fitzgibbon, *Barnewall v. Barnewall*, 3 Ridg. P. C. 68.)

(r) *Bennett v. Whitehead*, 2 P. W. 644; and see *Duke of Bolton v. Deane*, Pr. Ch. 516, and *Barnewall v. Barnewall*, 3 Ridg. P. C. 66.

(s) *Pulteney v. Warren*, 6 Ves. 73.

(t) 3 Ridg. P. C. 66.

(u) *Sturgis v. Morse*, 3 De G. & J. 1; 24 Beav. 541; *Wright v. Chard*, 4 Drew. 673; *Kidney v. Coussmaker*, 12 Ves. 158.

the possession of the defendant, because then the latter is regarded as a bailiff or trustee for the former (*v*), or where there has been fraud or suppression on the part of the defendant.

3. Where the case is that of a plaintiff coming forward not strictly as *cestui que trust*, but still as equitable owner to recover the estate, against one in *bona fide adverse possession*, many of the older decisions and *dicta* point to the conclusion that, in the absence of special circumstances, the account will be directed from the time \* of the accruer of the title (*w*), sub- [ \* 889 ] ject only to the qualification, that by analogy to the legal defence upon the Statute of Limitations, the account will not be carried back beyond six years before the institution of the suit (*x*). The more recent authorities seem, however, to establish that where there is no trust, no infancy, no fraud, and no suppression, where, in short, there is a mere *bona fide adverse possession*, the practice of the Court is not to carry back the account beyond the institution of the suit (*y*); unless at least there was a demand of possession by the plaintiff or acts equivalent thereto before proceedings were taken, in which case the account will be carried back to the time of the demand or constructive demand (*z*).

Where plaintiff comes as equitable owner against one in *bona fide adverse possession*.

4. In one case, in which the plaintiff was an infant, and the defendant in fact a trustee, but ignorant of his true character, the account was limited to the filing of the bill, except as to money which had been paid into Court (*a*), but the decision is of doubtful authority (*b*).

Where defendant ignorant of his true character of trustee.

5. If the *cestui que trust* or equitable owner be

(*v*) *Hicks v. Sallitt*, 3 De G. M. & G. 782; *Schroder v. Schroder*, Kay, 591; *Pascoe v. Swan*, 27 Beav. 508; and cases cited p. 886, note (*e*).

(*w*) *Dormer v. Fortescue*, Ridg. Rep. t. Hardwicke, 183; S. C. 3 Atk. 130, per Lord Hardwicke; *Hobson v. Trevor*, 2 P. W. 191; *Coventry v. Hall*, 2 Ch. Ca. 134.

(*x*) *Reade v. Reade*, 5 Ves. 749, 750; *Harmood v. Oglander*, 6 Ves. 215; *Drummond v. Duke of St. Albans*, 5 Ves. 439; *Stackhouse v. Barnston*, 10 Ves. 470.

(*y*) *Pulteney v. Warren*, 6 Ves. 93, per Lord Eldon; *Edwards v. Morgan*, M'Clel. 541, see 554, 555; *Hicks v. Sallitt*, 3 De G. M. & G. 813; *Thomas v. Thomas*, 2 K. & J. 79; *Morgan v. Morgan*, 19 L. R. Eq. 99; [but see *Hickman v. Upsall*, 4 Ch. D. 144, where the Court of Appeal were of opinion that in the absence of any special equitable considerations the account should by analogy to the legal rule be carried back for such a period as the Statute of Limitations allowed.]

(*z*) *Penny v. Allen*, 7 De G. M. & G. 409; and see *Edwards v. Morgan*, M'Clel. 554.

(*a*) *Drummond v. Duke of St. Albans*, 5 Ves. 433, see 439.

(*b*) See *Hicks v. Sallitt*, 3 De G. M. & G. pp. 811, 815.

Where there has been *laches* in suing.

guilty of *laches*, the account will not [generally] be carried further back than to the time of the institution of the suit, for it was the plaintiff's own fault that he did not institute his suit at an earlier period (*c*); and if it be a case of *great laches*, the Court will show its displeasure by not directing an account beyond the date of the decree (*d*).

[But the Court will in its discretion allow the account to be carried back, where the circumstances of the case justify it, and the House of Lords has recently, in a case of *great laches*, carried the account back for six years prior to the institution of the suit (*e*).]

3 & 4 W. 4, c. 27, not material.

[\*890] \*6. It would seem that 3 & 4 W. 4, c. 27, has no bearing upon the question how far the account should be carried back, for the suit in these cases is not one for recovery of *rent* within the general purview of the Act (*f*), nor is it a suit within the meaning of the 42nd section for the recovery of *arrears of rent*, which must mean arrears of some definite reserved rent, and not *mesne* profits. If there be any Statute of Limitations applicable by analogy it must be 21 James 1, cap. 16 (*g*).

How the order for an account is worded.

7. The order to account for *mesne* rents and profits will not, except in a case of gross fraud (*h*), contain the words, "which, *without neglect or default*, the defendant might have received," and, on the other hand, a direction to make *just allowances* in taking the account will be inserted (*i*).

Who is the person to account.

8. The assignee who has had the perception of the rents and profits will, in the first instance, account for them, not, however, with interest (*k*). But if the assignee be insolvent, the trustee who tortiously assigned will then be answerable for the *mesne* rents and profits personally (*l*). The Court has also allowed distinct

(*c*) *Dormer v. Fortescue*, Ridg. Rep. t. Hardwicke, 183; S. C. 3 Atk. 130, *per* Lord Hardwicke; *Cook v. Arnham*, 2 Eq. Ca. Ab. 235; *Pettward v. Prescott*, 7 Ves. 541; *Bowes v. East London Waterworks Company*, 3 Mad. 375; *Pickett v. Loggon*, 14 Ves. 215; *Schroder v. Schroder*, Kay, 591; [*Smith v. Smith*, 1 L. R. Ir. 206;] see *Kidney v. Coussmaker*, 12 Ves. 158.

(*d*) *Acherley v. Roe*, 5 Ves. 565.

(*e*) *Thomson v. Eastwood*, 2 App. Cas. 215.]

(*f*) *Grant v. Ellis*, 9 M. & W. 113.

(*g*) See observations of L. J. Turner, *Hicks v. Sallitt*, 3 De G. M. & G. 816.

(*h*) *Stackpoole v. Davoren*, 1 B. P. C. 9.

(*i*) *Howell v. Howell*, 2 M. & Cr. 478.

(*k*) *Macartney v. Blackwood*, Ridg. Lapp. & Sch. 602.

(*l*) *Vandebende v. Levingston*, 3 Sw. 625.

bills to be filed, first to recover the estate, and afterwards the *mesne profits* (*m*).

B.—1. “If a man,” continued Lord Fitzgibbon, “have a mere *legdl* title to the possession, he has no right to come into *equity* for the recovery of it; and if he has originally recovered the possession at *law*, he has no manner of right to proceed by *bill* for an account of rents and profits: as his title to the possession was at *law*, he must proceed for the whole there” (*n*).

If a person have a legal title he cannot sue in *equity* either for the estate or the *mesne* rents and profits.

2. Upon this rule it must be remarked, that a *dowress* (*o*) and *infant* (*p*) are allowed to proceed in *equity* upon their legal title, and incidentally to the relief may pray an account of the *mesne* rent and profits. But by 3 & 4 W. 4, c. 27, s. 41, the arrears of \*dower [\* 891] are recoverable for six years only next preceding the commencement of the suit. And the account of an infant will be barred, if he do not institute a suit within six years after he has attained his majority (*q*).

Unless the plaintiff be a dowress, or an infant.

C.—1. “If a party,” Lord Fitzgibbon proceeded, “be obliged to come into a Court of *equity* for aid to enable him to prosecute his title at *law*” (as where he could not recover in a legal action by reason of an outstanding term, or because the title deeds to the estate were in the hands of the defendant), “after possession recovered at *law*, there may be cases in which he may come back for an account of rents and profits in the suit depending in *equity*” (*r*). Or the plaintiff, being obliged to resort to *equity* on one ground, might, to prevent circuitry, have asked complete relief in the first instance in that Court; and if his title were estab-

If a person applied to *equity* to aid his action at *law* he might have come back for an account.

Or being obliged to come to *equity* on one ground, he might have

(*m*) Hall v. Coventry, 2 Ch. Ca. 134; Wright v. Chard, 4 Drew. 673.

(*n*) Barnewall v. Barnewall, 3 Ridg. P. C. 66. See also Dormer v. Fortescue, 3 Atk. 130; Tilly v. Bridges, Pr. Ch. 252; Owen v. Aprice, 1 Ch. Rep. 32; Anon. case, 1 Vern. 105, contradicted 3 Atk. 129.

(*o*) Mundy v. Mundy, 2 Ves. jun. 122; D'Arcy v. Blake, 2 Sch. & Lef. 387; Wild v. Wells, 1 Dick. 3; Meggot v. Meggot, 2 Id. 794; Goodenough v. Goodenough, 2 Id. 795; Curtis v. Curtis, 2 B. C. C. 620; Moor v. Black, Cas. t. Talbot, 126; and see Dormer v. Fortescue, 3 Atk. 130; Pulteney v. Warren, 6 Ves. 89; Agar v. Fairfax, 17 Ves. 552.

(*p*) See Dormer v. Fortescue, 3 Atk. 130, 134; S. C. Ridg. Rep. t. Hardwicke, 183, 191; Pulteney v. Warren, 6 Ves. 89; Newburgh v. Bickerstaffe, 1 Vern. 295.

(*q*) Cockey v. Lockey, Pr. Ch. 518; and see Knox v. Gye, 5 L. R. H. L. 674.

(*r*) See Dormer v. Fortescue, 3 Atk. 124; S. C. Ridg. Rep. t. Hardwicke, 176; Reade v. Reade, 5 Ves. 744.

obtained his whole relief there.

But the account in equity would be restricted to the legal limit, or to the institution of the suit.

lished, an account of the rents and profits would have been consequential upon the relief (s).

2. In these cases the account ought upon principle to be restricted to the same period as that for which the *mesne profits* were recoverable at law; for the plaintiff recovers upon a *legal* title, and the circumstance of his being obliged to sue in equity ought not to vary his rights; and there is authority to support this view (t); but in a later case (u) Vice-Chancellor Wood stated the rule to be, that in an adverse suit *in the nature of an ejectment suit* the account is directed only from the filing of the bill; and there may be some difficulty in establishing a distinction between cases where the plaintiff sues upon a mere equitable title and cases where his title is rendered partially equitable, so to speak, by the existence of outstanding terms or estates.

Unless the defendant be guilty of fraud.

3. If the plaintiff has been kept out of the estate by the *fraud, misrepresentation, or concealment* of the defendant, the Court will suppose that, had the plaintiff known his just rights, he would have commenced his action at law on the first accruer of his title, and will then decree an account of the *mesne* rents and profits against the defendant from that period (v).

[ \* 892 ]

## \*SECTION II.

### THE RIGHT OF ATTACHING THE PROPERTY INTO WHICH THE TRUST ESTATE HAS WRONGFULLY BEEN CONVERTED.

General rule.

1. If the trust estate has been tortiously disposed of by the trustee, the *cestui que trust* may attach and follow the property that has been substituted in the place of the trust estate, so long as the metamorphosis can be traced.

Tortious conversion.

In *Taylor v. Plumer* (w) it was argued that although where the conversion was *in pursuance of the trust*, the newly acquired property would be bound by the original equity (x); yet where the conversion was *tortious*,

(s) *Townsend v. Ash*, 3 Atk. 336; *Edwards v. Morgan*, M'Clel. 541; *Reynolds v. Jones*, 2 Sim. & St. 206.

(t) *Reynolds v. Jones*, 2 Sim. & St. 206.

(u) *Thomas v. Thomas*, 3 K. & J. 85.

(v) *Dormer v. Fortescue*, Ridg. Rep. t. Hardwicke, 184, 185; S. C. 3 Atk. 130.

(w) 3 M. & S. 562.

(x) *Burdett v. Willett*, 2 Vern. 638; *Ryall v. Rolle*, 1 Atk. 172; *Ex parte Chion*, 3 P. W. 187, note (A); *Waite v. Whorwood*, 2 Atk. 159; *Ex parte Sayers*, 5 Ves. 169; *Anon. case*, Sel. Ch. Ca. 57.

then, as the property purchased was not in a form consistent with the trust, and the *cestui que trust* would be under no obligation to accept it in lieu of the rightful property, the *cestui que trust* should come in as a general creditor, and not be permitted to assert a specific lien. But the distinction was disallowed (y); for "An abuse of trust," said Lord Ellenborough, "can confer no rights on the party abusing it, nor on those who claim in privity with him" (z).

2. It was said by Lord King that "*money* had no earmark, insomuch that if a receiver of rents should lay out all the money in the purchase of land, or if an executor should realise all his testator's estate, and afterwards die insolvent, yet a Court of equity could not charge or follow the land" (a); and *bank notes* and *negotiable bills* have been represented as possessing the same quality. But the notion seems to have originated from some misconception, and cannot be supported. Lord Mansfield observed, "It has been quaintly said that the reason why money cannot be \* followed is because it *has no earmark*, but [\* 893] this is not true. The true reason is upon account of the currency of it—it cannot be recovered after it has passed in currency. Thus in the case of money stolen, the true owner cannot recover it after it has been paid away fairly and honestly upon a valuable and *bonâ fide* consideration: but before the money has passed in currency an action may be brought for the money itself. Apply this to the case of a bank-note—an action may lie against the finder, it is true, but not after it has been paid away in currency" (b). And Lord Ellenborough observed, "The dictum that *money has no earmark* must be understood as predicated only of an undivided and undistinguishable mass of current money; but money kept in a bag, or otherwise kept apart from other

(y) The same point has been viewed as not maintainable in several *previous* cases, as in *Whitecomb v. Jacob*, 1 Salk. 160; *Lane v. Dighton*, Amb. 409; *Ryal v. Ryal*, Ib. 413; *Balgney v. Hamilton*, Ib. 414. N. B. *Wilson v. Foreman*, 2 Dick. 593, is misreported; see *Lench v. Lench*, 10 Ves. 519. The subsequent cases are *Lord Chedworth v. Edwards*, 8 Ves.\* 46; *Greatley v. Noble*, 3 Mad. 79; *Buckeridge v. Glasse*, Cr. & Ph. 126; *Murray v. Pinkett*, 12 Cl. & Fin. 784; *Sheridan v. Joyce*, 1 Jon. & Lat. 401; *Trench v. Harrison*, 17 Sim. 111; *Harford v. Lloyd*, 20 Beav. 310; *Frith v. Cartland*, 2 H. & M. 417.

(z) *Taylor v. Plumer*, 3 M. & S. 574.

(a) *Deg v. Deg*, 2 P. W. 414; and so his Lordship seems to have decided in *Cox v. Bateman*, 2 Ves. 19; and see *Waite v. Whorwood*, 2 Atk. 159; *Whitecomb v. Jacob*, 1 Salk. 160.

(b) *Miller v. Race*, 1 Burr. 457, 459.

money, guineas, or other coin marked (if the fact were so) for the purpose of being distinguished, are so far earmarked as to fall within the rule which applies to every other description of personal property, whilst it remains in the hands of the factor or his general legal representatives" (c). The only distinction, then, between *money*, *notes*, or *bills*, and *other chattels*, appears to be this—that the former, for the protection of commerce cannot be pursued into the hands of a *bona fide* holder, to whom they have passed in circulation (d), whilst other chattels can be recovered even from a purchaser for valuable consideration, provided he did not buy them in market overt. Money (e), notes (f), and bills (g), may be followed by the rightful owner, where they have not been circulated or negotiated, or if the person to whom they passed had express notice of the trust (h). And the only difference to be taken between *money* on the one hand, and *notes* and *bills* on the other, is that money is not earmarked, and therefore cannot be traced except under particular circumstances, but notes and bills, from carrying a number or date, can in general be identified by the owner without difficulty (i).

Trust money mixed with the trustee's money.

3. We may here put the case of trust money mixed in the same heap with the trustee's money. It may be [\*894] said, that the trust \*money has, like water, run into the general mass, and become amalgamated, and therefore the *cestui que trust* has no *lien*. But clearly this cannot be maintained, for suppose a trustee, partly with his own money and partly out of the trust fund, to have purchased an estate. It cannot be predicated of any particular part of the estate that it was purchased with the *cestui que trust's* money, and yet the *cestui que trust* has a *lien* upon the whole for the amount that was misemployed (k). And it follows in the other case,

(c) Taylor v. Plumer, 3 M. & S. 575.

[(d) Collins v. Stimson, 11 Q. B. D. 142.]

(e) See Taylor v. Plumer, 3 M. & S. 575; Miller v. Race, 1 Burr. 457; Howard v. Jemmet, 3 Burr. 1369; King v. Eggington, 1 T. R. 370; Ryall v. Rolle, 1 Atk. 172.

(f) Anon. case, 1 Salk. 126; S. C. 1 Raym. 738; Miller v. Race, 1 Burr. 457; Taylor v. Plumer 3 M. & S. 562.

(g) Bennet v. Mayhew, cited Pulteney v. Darlington, 1 B. C. C. 232, and Cator v. Earl of Pembroke, 2 B. C. C. 287; Frith v. Cartland, 2 H. & M. 417; and see *Ex parte* Sayers, 5 Ves. 169; Lord Chedworth v. Edwards, 8 Ves. 46; Ryall v. Rolle, 1 Atk. 172; Raphael v. Bank of England, 17 C. B. 161.

(h) Verney v. Carding, cited Joy v. Campbell, 1 Sch. & Lef. 345.

(i) See Ford v. Hopkins, 1 Salk. 283.

(k) Lane v. Dighton, Amb. 409; Lewis v. Madocks, 17 Ves. 57, 58; Price v. Blakemore, 6 Beav. 507; Hopper v. Conyers, 2 L. R. Eq. 549.



that though the identical pieces of coin cannot be ascertained, yet, as there is so much belonging to the trust in the general heap, the *cestui que trust* is entitled to take so much out (*l*).

4. Upon a similar principle, if a *surviving partner*, Assets employed in being the executor of a deceased partner, continue the testator's capital without authority in his trade, though the capital may consist only of the stock and debts of the partnership, and these may undergo a continual course of change and fluctuation, yet the Court follows the trust capital throughout all its ramifications, and gives to the beneficiaries of the deceased partner's estate the fruits derived from that capital so continually altered and changed (*m*).

5. And so if a trustee pay trust money into a bank to the account of himself, not in any way earmarked with the trust, and also keep private monies of his own to the same account, the Court will disentangle the account, and separate the trust from the private monies, and award the former specifically to the *cestui que trust* (*n*). [And the same rule will apply equally in the case of a person occupying a fiduciary position, although not an express trustee, as a factor, or agent (*o*), and has even been applied to the case of a person borrowing money for a specific purpose and not applying it for the purpose for which it was advanced (*p*). It was formerly held that] as against the *cestui que trust* the general rule must prevail that the sums drawn out must be attributed \* to the earliest deposits, [\* 895] according to the order in which they were paid in (*q*); [but, where the question is only between the *cestui que trust* and the trustee, the rule has been modified, and so long as the trustee has monies of his own standing Money followed through a bank.

(*l*) See *Pennell v. Deffell*, 4 De G. M. & G. 382; *Ex parte Sayers*, 5 Ves. 169; *Ernest v. Croysdill*, 2 De G. F. & J. 175; *Frith v. Cartland*, 2 H. & M. 417; [*Re Hallett's Estate*, 13 Ch. D. 696.]

(*m*) See pp. 277, 278, *supra*.

(*n*) *Pennell v. Deffell*, 4 De G. M. & G. 372. The observations of L. J. Knight Bruce, p. 381, are well worth a careful perusal. [*Re Hallett's Estate*, 13 Ch. D. 696; *Birt v. Burt*, 11 Ch. D. 773, note; and see *Ex parte Hardcastle*, 44 L. T. N. S. 523; 29 W. R. 615, where the case failed on the identification of the trust funds.]

(*o*) *Re Hallett's Estate*, 13 Ch. D. 696, where the earlier cases are discussed; *Birt v. Burt*, 11 Ch. D. 773, note.]

[(*p*) *Gibert v. Gonard*, 52 L. T. N. S. 54; 33 W. R. 302; and see *Harris v. Truman*, 7 Q. B. D. 340; 9 Q. B. D. 264.] *Gibert v. Gonard*, is also reported in 54 L. J. N. S. Ch. 439.

[(*q*) *Pennell v. Deffell*, 4 De G. M. & G. 372; *Frith v. Cartland*, 2 H. & M. 417; *Brown v. Adams*, 4 L. R. Ch. App. 764.]

to the account, drawings by him for his private purposes will be attributed to his private monies, leaving the trust monies intact (*r*). This follows from the general principle that where a man does an act which may be rightfully performed, he cannot say that that act was intentionally, and in fact, done wrongly; so far as possible the honest intention of drawing out his own money must be attributed to the trustee. Where, however, the trustee has exhausted his own monies, and the account at the bank is composed of monies belonging to different trusts, the general rule will prevail, and the sums drawn out will, in the absence of evidence to the contrary, be attributed to the earliest deposits (*s*).] If trust money be paid into a bank to an account headed in such a way that the banker cannot fail to know, and must be taken to know that it was a trust account, though the bankers are not bound to enquire into the propriety of the trustee's cheques upon that account, yet if the trustee becomes bankrupt and has overdrawn his *private* account, the bank cannot apply the credit of the *trust account* by way of set-off against the debit of the *private account* (*t*).

[But where a banking company were employed as agents to collect money and to remit it to their employers, and they received the money in cash and placed it with the other cash of the bank, and informed their employers that the money had been remitted, but before it was actually remitted the bank failed, it was held that the money was part of the general assets of the bank, and that the employers of the bank had no priority over the other creditors (*u*); but this case has been disapproved of by the Court of Appeal and cannot be regarded as law (*v*).<sup>1</sup>

[Different  
trust funds  
inter-mixed.]

6. In a recent Scotch case where the funds of two charities had been intermixed and dealt with as a com-

[*(r)* *Re Hallett's Estate*, 13 Ch. D. 696; overruling *Pennell v. Deffell*, *ubi supra*, and the other earlier cases.]

[*(s)* *Re Hallett's Estate*, *ubi supra*.]

[*(t)* *Ex parte Kingston*, 6 L.R. Ch. App. 632.

[*(u)* *Ex parte Dale and Company*, 11 Ch. D. 772; and see *Whitecomb v. Jacob*, 1 Salk. 160; *Ryall v. Rolle*, 1 Atk. 165, 172; *Ex parte Dumas*, 1 Atk. 232; *Scott v. Surman*, Willes, 400.]

[*(v)* *Re Hallett's Estate*, 13 Ch. D. 696.]

<sup>1</sup> Where an insolvent bank mingled the proceeds of a draft left with it for collection with its own funds and a receiver was appointed, it was held that the *cestui que trust* could not follow his money into the receiver's hands but must occupy the position of a general creditor; *Illinois Trust and Savings Bank v. Buffalo Bank*, 15 Fed. Rep. 858.

mon fund, and part of the trust funds which, however, could be traced as having originally belonged to one of the charities had been invested in land which \*subsequently increased very largely in [\* 896] value, it was held that the profit must be taken to have been made by the whole trust, and must be apportioned between the charities in the proportions in which they were originally entitled to the common fund (w).]

7. In tracing money into land, the principal difficulty in the old cases arose from the Statute of Frauds (x), the 7th section enacting that all declarations of trusts of land should be manifested and proved by some writing. It was formerly held that parol evidence, to prove a state of circumstances from which a Court of equity would elicit a constructive trust, was inadmissible (y); but Lord Hardwicke, on the ground that constructive trusts were excepted out of the Statute of Frauds (z), ruled that parol evidence might be given (a); and Sir T. Clarke, in the leading case of *Lane v. Dighton* (b) (though had the point been *res integra*, he should have thought the evidence not admissible within the statute) followed the authority of Lord Hardwicke; and whatever doubts might formerly have been entertained upon the subject the law is now settled (c).<sup>1</sup>

8. The mere fact that a trustee has trust money in his hands when he makes a purchase, is not sufficient to attach the trust on lands bought by him (d).<sup>2</sup> But if a trustee who is under an obligation to lay out money on land, purchase an estate at a price corresponding with the sum to be invested, the Court, independently of positive evidence, may presume the trust money to have been so applied (e). But no such presumption can be raised where it can be shown that the trustee, though under such an obligation, was mistaken

Following money into land with reference to the Statute of Frauds.

Trustee bound to invest a certain sum, and purchasing at that price.

[(w) *The Lord Provost, &c., of Edinburgh v. The Lord Advocate*, 4 App. Cas. 823.]

(x) 29 Car. 2, c. 3.

(y) See *supra*, Chap. IX. s. 2, p. 167.

(z) By the 8th section; see p. 193, *supra*.

(a) *Ryal v. Ryal*, Amb. 413; and see *Anon. case*, Sel. Ch. Ca.

57.

(b) Amb. 409.

(c) *Lench v. Lench*, 10 Ves. 517; *Hopper v. Conyers*, 2 L. R. Eq. 549.

(d) *Sealy v. Stawell*, 2 Ir. Eq. 326.

(e) See *Anon. case*, Sel. Ch. Ca. 57; *Price v. Blakemore*, 6 Beav. 507; *Mathias v. Mathias*, 3 Sm. & G. 552.

<sup>1</sup> See *ante*, p.

<sup>2</sup> *Pharis v. Leachman*, 20 Ala. 663.

in the nature of the trust, and acted under a different impression (*f*). And where a tenant for life with power to sell and invest in the purchase of other land, purchased lands with *borrowed monies*, and many years afterwards sold the settled estates, and applied the purchase money partly in discharge of the debts thus contracted by him, it was held that the purchased lands could not be treated as liable to the trusts of the settled estates (*g*).<sup>1</sup>

Covenant to settle his whole personal estate and a subsequent purchase is made.

9. In *Lewis v. Madocks* (*h*), no evidence to connect [\* 897] any particular \* fund with the estate was necessary, for a person having covenanted on his marriage to settle *all* the personalty he should acquire upon certain trusts, and having afterwards invested parts of his personalty on land, it was clear that the money expended upon the estate was bound by the trust, and could therefore be followed into the purchase.

Whether *cestui que trust* can take the land itself, or has only a lien.

10. Where a trust fund is traceable into land, and the fund constitutes a part only of the money laid out in the purchase, the Court has usually given a lien merely on the land for the trust money and interest (*i*); but where the entire land is clearly the fruit of the trust fund, the *cestuis que trust* must upon principle have a right to take the land itself, whether the purchase was or not of the description authorized by the trust (*k*).<sup>2</sup>

[Trustee may follow trust money though he has concurred in breach.]

[11. A trustee, who has himself concurred in a breach of trust whereby the trust estate has been improperly spent upon buildings upon his co-trustee's property, may, notwithstanding such concurrence, take proceedings against his co-trustee to follow the trust property (*l*).]

Statute of Limitations.

12. Where trust money is followed into the hands of a person who, as having received it by collusion, or with express notice of the trust, becomes himself a trustee,

(*f*) *Perry v. Phelps*, 4 Ves. 108, see 116, 117.

(*g*) *Denton v. Davies*, 18 Ves. 499.

(*h*) 8 Ves. 150; S. C. 17 Ves. 48.

(*i*) *Lane v. Dighton*, Amb. 409; *Lewis v. Madocks*, 8 Ves. 150; 17 Ves. 48, see 57; *Price v. Blakemore*, 6 Beav. 507; *Scales v. Baker*, 28 Beav. 91; *Hopper v. Conyers*, 2 L. R. Eq. 549.

(*k*) *Trench v. Harrison*, 17 Sim. 111. Lord Manners, in *Savage v. Carroll*, 1 B. & B. 265, see 284, seems to have thought otherwise; but this was before *Taylor v. Plumer*, p. 892, *supra*.

(*l*) *Carson v. Sloane*, 13 L. R. Ir. 139; *Price v. Blakemore*, 6 Beav. 507.]

<sup>1</sup> And see *Noble v. Andrews*, 37 Conn. 346.

<sup>2</sup> *Oliver v. Piatt*, 3 How. 333; *Kaufman v. Crawford*, 9 W. & S. 134; *Murray v. Lylburn*, 2 Johns. Ch. 441.

he is precluded from pleading the Statute of Limitations (*m*).

[13. It is not a fraudulent preference on the part of a trustee who has misappropriated trust money to make it good on the eve of bankruptcy (*n*).] [Repayment of trust money not a fraudulent preference.]

14. Money obtained by fraud cannot be followed into the hands of persons who take it in satisfaction of a *bonâ fide* debt without notice (*o*).]

### \* SECTION III.

[\* 898]

#### OF THE REMEDY FOR A BREACH OF TRUST AGAINST THE TRUSTEE PERSONALLY.

1. We may remark *in limine* that by a modern statute (*p*),<sup>1</sup> a breach of trust has been made a *criminal* act, and that if a trustee of any property for the benefit of another person, or for any public or charitable purpose, *with intent to defraud*, appropriates the same to his own use or for any other purpose than the legitimate one, he is now to be deemed guilty of a *misdeemeanour* and be liable to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. But no prosecution is to be commenced without the sanction of Her Majesty's Attorney-General, or, in the vacancy of that office, of the Solicitor-General; nor, where civil proceedings have been taken, without the sanction of the Court of civil judicature before which the same are pending (*q*). And *no remedy* at law or in equity is to be *affected*, nor is the Act to *prejudice any agreement entered into or security given by any trustee*, having for its object the restoration or repayment of any trust property misappropriated.

Fraudulent  
Trustees'  
Punishment  
Act.

(*m*) Ernest *v.* Croysdill, 3 De G. F. & J. 175; 6 Jur. N. S. 740; Rolfe *v.* Gregory, 11 Jur. N. S. 97; S. C. 4 De G. J. & S. 576; see *post*, p. 900.

[(*n*) *Ex parte* Stubbins, 17 Ch. D. 58.]

[(*o*) Northern Counties, &c. Insurance Company *v.* Whipp, 26 Ch. D. 482, 495.]

(*p*) 24 & 25 Vict. c. 96, ss. 80, 86, re-enacting substantially 20 & 21 Vict. c. 54, which had been repealed by 24 & 25 Vict. c. 94.

(*q*) See Wadham *v.* Rigg, 1 Dr. & Sm. 216.

<sup>1</sup> Similar acts have been adopted in most of the United States making a wilful breach of trust with intent to defraud a *misdeemeanor*.

Effect of Act  
upon civil  
proceedings.

2. This last mentioned enactment of the statute leaves the remedy of the *cestui que trust* in reference to civil proceedings exactly as it stood before the Act. It relieves him from such obligation, if any, as the statute might have been held to impose of prosecuting the fraudulent trustee before proceeding to recover his property (*r*); and, notwithstanding the general policy of the law (*s*), may perhaps be held to go so far as to authorize an agreement for the restoration of the trust property even though the withdrawal of an indictment against the trustee be one of the terms of the arrangement.

Where a  
solicitor is  
party to a  
breach of  
trust.

[ \* 899 ] \* 3. A solicitor, who wilfully advises a breach of trust, is liable to be struck off the roll (*t*). And *a fortiori* a solicitor, who, being a trustee, himself commits a wilful breach of trust, is amenable to the same penalty (*u*). But a solicitor is not liable as a constructive trustee for the consequences of acts done by such solicitor, pursuant to instructions from his clients, who are trustees, and exercising their legal powers, unless the solicitor either receive some part of the trust property or assist with knowledge in some dishonest and fraudulent design on the part of his clients (*v*). Thus a testator devised and bequeathed his residuary estate to Crush, Lugar, and Addy, his three trustees and executors, upon trust for his four children, viz. Ann (who married Barnes), Susan (who married the trustee, Addy), and William and Mary. The shares of Ann and Susan were to be held upon trust for their separate use respectively, without power of anticipation, with remainder to their children; and the will contained a power of appointment of new trustees vested in the executors, but there was no authority to diminish their number. Crush renounced and disclaimed, and Clarke was appointed in his place; but Lugar and Clarke both died, and Addy became sole trustee of the trust fund. The shares of Susan and William had been satisfied, and Mary's share was not in question; but as to the share of Ann, the wife of

(*r*) As to the necessity for prosecuting before taking civil proceedings in cases of felony, see *Cox v. Paxton*, 17 Ves. 329; *White v. Spettigue*, 13 M. & W. 603; *Scattergood v. Sylvester*, 15 Q. B. 506; [*Midland Insurance Company v. Smith*, 6 Q. B. D. 561; *Rooke v. D'Avigdor*, 10 Q. B. D. 412.]

(*s*) See *Keir v. Leeman*, 9 Q. B. 371; [*Williams v. Bayley*, 1 L. R. H. L. 200; *Flower v. Sadler*, 10 Q. B. D. 572.]

(*t*) *Goodwin v. Gosnell*, 2 Coll. 457, see p. 462.

(*u*) *Re Chandler*, 22 Beav. 253; *Re Hall*, 2 Jur. N. S. 633.

(*v*) *Barnes v. Addy*, 9 L. R. Ch. App. 251, per Lord Selborne.

Barnes, there being disputes between Addy, the trustee, and Barnes, Addy instructed his solicitor, Duffield, to appoint Barnes sole trustee in the place of Addy, so far as regarded the share of Ann Barnes. Duffield represented the danger of placing the fund under the power of a single trustee, and advised Addy not to do it; but, as he persisted, he advised him at all events to take a deed of indemnity. Duffield afterwards declined to proceed unless a separate solicitor acted for Mrs. Barnes and her children, and Preston was thereupon appointed such solicitor, and he wrote to Ann Barnes a letter explanatory of the risk, but nevertheless Ann Barnes wished it to be done. The deed of appointment of Barnes as sole trustee, and the deed of indemnity which had been proposed by Duffield, were then approved by Preston and executed; and Addy transferred the share of Ann Barnes (amounting, after deductions, to 2074*l.* consols), into the name of Barnes, who the next day sold it out, and applied the proceeds in his business and became bankrupt. The fund having been lost, the children of Ann Barnes filed their bill against the \*administratrix of Addy (then [ \* 900 ] deceased), and against Duffield and Preston, to compel them to restore the trust fund. Addy's estate was declared liable, but the bill was dismissed as against Duffield and Preston. The plaintiffs appealed from this dismissal, and rested their case on the solicitors being parties to a threefold breach of trust, viz., first, the appointment of a single trustee; secondly, the transfer of the fund into the name of a sole trustee; and, thirdly, the division of the fund, so that there should be a separate trustee of each part. There was no evidence that either Duffield or Preston suspected, or had reason to suspect, the good faith of Barnes, and Lord Selborne and Lord Justice James concurred in the principle above laid down, and dismissed the appeal with costs (*w*).

4. As regards *civil* proceedings for compensation Civil proceedings against the trustee, the *cestui que trust*, in the event of a breach of trust, is entitled to institute proceedings against the trustee to compel a compensation from him personally for the loss which the trust estate has sustained<sup>1</sup>; and if the plaintiff has a vested interest and has reason to apprehend that the trustee is going abroad, he may obtain a writ of *ne exeat regno* (*x*). [But the

(*w*) Barnes v. Addy, 9 L. R. Ch. App. 244.

(*x*) Hawkins v. Hawkins, 1 Dr. & Sm. 75. As to the assignment of a right to sue for redress in respect of a breach of trust, see

<sup>1</sup> Lathrop v. Brampton, 31 Cal. 17.

† 5 LAW OF TRUSTS.

breach of trust must be brought home to the trustee, and if there is a doubt whether the trustee has acted honestly and *bonâ fide* in the discharge of his duty, although he may have made mistakes, the doubt should be determined in favour of the trustees (y).<sup>1</sup>]

Statute of  
Limitations.

5. This right to sue is not affected by the Statute of Limitation (z).<sup>2</sup> And even a trustee, who was also a [ \* 901 ] *cestui que trust* in \*remainder, and by whose neglect the tenant for life got possession of the fund, has been allowed, notwithstanding the statute, to recover it from the estate of the tenant for life who wrongfully possessed himself of it (a); and an agent

Hill v. Boyle, 4 L. R. Eq. 260. If a trustee has made default in payment of a trust fund which was in his hands, and was misapplied, he can be attached, though he may have spent the money before the date of the order for payment, and is unable to pay, and such trustee is within the third exception of the Debtors' Act, 32 & 33 Vict. c. 62, s. 4; Middleton v. Chienester, 6 L. R. Ch. App. 152.

[(y) *Per* Jessel, M. R.; *Re* Owens, 47 L. T. N. S. 61.]

(z) Phillipo v. Munnings, 2 M. & C. 309; Browne v. Radford, W. N. 1874, p. 124; Milnes v. Cowley, 4 Price, 163; Cator v. Croydon Railway Company, 4 Y. & C. 405; Downes v. Bullock, 25 Beav. 61; Clark v. Hoskins, 36 L. J. N. S. Ch. 689; Butler v. Carter, 5 L. R. Eq. 276; Brittlebank v. Goodwin, 5 L. R. Eq. 545; Hartford v. Power, 2 Ir. Rep. Eq. 204; Woodhouse v. Woodhouse, 8 L. R. Eq. 514; Burdick v. Garrick, 5 L. R. Ch. App. 233; Stone v. Stone, 5 L. R. Ch. App. 74; Mutlow v. Bigg, 18 L. R. Eq. 246, reversed on other grounds, 1 Ch. D. 385; Watson v. Saul, 1 Giff. 188; Harris v. Harris (No. 2), 29 Beav. 110; Ernest v. Croysdill, 2 De G. F. & J. 175; Rolfe v. Gregory, 11 Jur. N. S. 98; S. C. 4 De G. J. & S. 576; and see Bright v. Legerton, 2 De G. F. & J. 606; Tyson v. Jackson, 30 Beav. 384; Cresswell v. Dewell, 4 Giff. 466; Burrowes v. O'Brien, 15 Ir. Ch. Rep. 424; Burrowes v. Gore, 6 H. L. C. 907; [Metropolitan Bank v. Heircn, 5 Ex. D. 319.] As to the cases of Dunne v. Doran, 13 Ir. Eq. R. 545, and Brereton v. Hutchinson, 3 Ir. Ch. Rep. 361; see Brittlebank v. Goodwin, 5 L. R. Eq. 551. But see Carroll v. Hargrave, 5 I. R. Eq. 123. As to suits between solicitor and client, see *Re* Hindmarsh, 1 Dr. & Sm. 129.

(a) Butler v. Carter, 5 L. R. Eq. 276.

<sup>1</sup> In Pennsylvania equitable relief will, in such cases, be administered in an action for money had and received; *Aycinena v. Peries*, 6 W. & S. 243. In Indiana an action on the case is allowed where the *cestui que trust* seeks damages caused by reason of the trustee's negligence in performing his duty; *Bennett v. Preston*, 17 Ind. 291. Elsewhere, so long as the trust account is still open the *cestui que trust* has no remedy against his trustee but in equity, *State v. Diggs*, 21 Md. 240; *Brooks v. Brooks*, 11 Cush. 18; *White v. Sheldon*, 4 Nev. 280. If the trust account be closed and a balance struck, so that some legal claim against the trustee is established, an action will lie at law; *Beaches v. Downin*, 12 Vt. 139; *Blue v. Patterson*, 1 Dev v. Bat. Eq. 457; *Duval v. Covenhoven*, 4 Wend. 561. See *Perry on Trusts* (3rd Ed.) § 843.

<sup>2</sup> *Kane v. Bloodgood*, 7 Johns. Ch. 90; *Norton v. Ladd*, 22 Conn. 203; *Creigh v. Henson*, 10 Gratt, 231.



who collects debts for his employer under a power of attorney to collect debts and hold the proceeds upon certain trusts, is regarded as a trustee, and cannot plead the statute (b). [So directors of a company who have improperly paid dividends out of capital cannot plead the statute (c)] And the personal representatives of a deceased trustee who has committed a breach of trust, or a legatee or next of kin in possession of the assets, with notice of the breach of trust (d), cannot plead the statute, but must be answerable in the same way as the testator or intestate would have been (e). But though the statute cannot be pleaded in bar, yet where the trust fund has no actual existence, but the suit is for damages, gross laches will *per cursum cancellariæ* disentitle a plaintiff to relief, the Statute of Limitations leaving it open to a Court of equity to act upon its own rule as to laches and acquiescence (f). [And where a suit is founded on a breach of duty or fraud committed by a person in the position of a trustee, as where a director receives a bribe to neglect his duty, time will commence to run so soon as the fraud has been discovered (g).]

6. By a recent statute, 36 & 37 Vict. c. 66, s. 25, subs. 36 & 37 Vict. 2, it is expressly enacted that no claim by a *cestui que* c. 66. *trust* against his trustee in respect of any breach of an express trust, shall be barred by any statute of limitations. But 37 & 38 Vict. c. 57, s. 10, enacts that from 1st January, 1879, no money or legacy charged on any

(b) *Burdick v. Garrick*, 5 L. R. Ch. App. 233. Solicitors receiving money in the character of agents can in general plead the statute; *Re Hindmarsh*, 1 Dr. & Sm. 129; *Watson v. Woodman*, 2 L. R. Eq. 721; but not so, where they receive monies bound expressly by a particular trust of which they are co-sustant; see *Burdick v. Garrick*, 5 L. R. Ch. App. 240; [and see *Power v. Power*, 13 L. R. Ir. 281, where the principle was laid down, that "where there is not merely an agency between the parties, but also a superadded fiduciary relation, the remedy of the principal, who is then also the *cestui que trust*, is not one arising merely from contract, or duty springing from such contract, where a common law liability would alone exist, but is one to be dealt with on the equitable relation of trustee and *cestui que trust*."] ]

[(c) *Re Fliteroff's case*, 21 Ch. D. 519.]

(d) *Woodhouse v. Woodhouse*, 8 L. R. Eq. 514; see p. 521.

(e) *Story v. Gape*, 2 Jur. N. S. 706; *Obee v. Bishop*, 1 De G. F. & J. 137; *Brittlebank v. Goodwin*, 5 L. R. Eq. 545. But see the Irish cases, *Dunne v. Doran*, 13 Ir. Eq. Rep. 545; *Brereton v. Hutchinson*, 3 Ir. Ch. Rep. 361; *Carroll v. Hargrave*, 5 I. R. Eq. 123.

(f) *Philips v. Pennefather*, 8 I. R. Eq. 486, *per* Sir Jos. Napier, C. S.

[(g) *Metropolitan Bank v. Heiron*, 5 Ex. D. 319.]

[ \* 902] *land* \* or *rent* shall, though secured by an express trust, be recoverable but within the time allowed for recovery had there been no express trust (*h*).

Trust money  
taken by a  
firm.

7. Where the trustee is one of a firm, and trust money finds its way into the coffers of the firm, with the sanction of the partners, and is misapplied, not only the trustee but the partners also are liable (*i*). And if one of a firm of solicitors, in transacting business with trustees, practise a fraud upon the trustees, the co-partners are liable (*k*).

Corporation  
liable for  
breach of  
trust.

8. The remedy for a breach of trust lies against a corporation as well as against an individual; and a municipal corporation since the Municipal Corporation Act, is liable for a breach of trust committed before the Act (*l*).

Land  
tortiously  
sold.

9. If a trustee dispose of the trust estate to a purchaser for valuable consideration *without notice*, the *cestui que trust* may compel the trustee to purchase other lands of equal value to be settled upon the like trust (*m*), or the *cestui que trust* may at his option take the proceeds of the sale, with interest, or the present estimated value of the lands sold, after deducting any increase of price caused by subsequent improvements (*n*).

[Trustee  
allowing  
husband to  
misapply the  
fund.]

[10. If a trustee for the separate use of a married woman for life allow the husband to get possession of and misapply the trust fund without the wife's knowledge, he is liable for the income which would but for the breach of trust have accrued on the fund, notwithstanding that the married woman had acquiesced in the payment of the income prior to the breach of trust to her husband, for in such a case no assent on her part to the retainer by the husband of the subsequent income can be presumed (*o*).]

Neglect to  
accumulate.

11. Where a testator had directed an investment in Three per Cent. Consolidated Bank Annuities and an accumulation of the dividends, the trustee was decreed to purchase the sum of stock which the fund, if regularly invested, would have produced, and to make good

(*h*) See *ante*, p. 885.

(*i*) *Eager v. Barnes*, 31 Beav. 579.

(*k*) *Sawyer v. Goodwin*, 36 L. J. N. S. Ch. 578; *Long v. Hay*, W. N. 1871, p. 134.

(*l*) *Attorney-General v. Corporation of Leicester*, 9 Beav. 546.

(*m*) See *Mansell v. Mansell*, 2 P. W. 681; *Vernon v. Vaudrey*, Barn. 303; *Macnamara v. Carey*, 1 Ir. R. Eq. 23; and see 37 & 38 Vict. c. 78.

(*n*) See *Attorney-General v. Burgesses of East Retford*, 2 M. & K. 35; but see *Denton v. Davies*, 18 Ves. 504.

[(*o*) *Dixon v. Dixon*, 9 Ch. D. 587.]

the amount due in respect of subsequent accumulation (p).

12. If a settlement contain a covenant for the transfer of stock, [or the creation of a charge upon property,] and the trustee \* *neglects to enforce the transfer* (q), [or the creation of the charge (r),] he is liable for all the consequences. Covenant to transfer stock. [\* 903]

13. So if there be a trust for sale, and the trustee *neglects to sell* for a great length of time, whereby the property is deteriorated, he is answerable for the loss (s). Neglect to sell.

14. If a trustee suffer a *policy of insurance to be come forfeited* through neglect to pay the premiums, he is bound to make good the loss to the *cestui que trust* (t); provided, that is, he had funds in hand for payment of the premiums, for if he had none and could procure none, he would be exempt from liability (u). He may, however, either advance money himself, or borrow it from another on the security of the policy, and a *lien* on the policy will be allowed (v). If there be no means of keeping up the policy the Court will direct it to be sold or surrendered (w). Policy forfeited.

[15. In a recent case where a trustee had neglected to give notice of a settlement affecting a policy to the insurance office, and had, in contemplation of a breach of trust, retired in favour of a single trustee, who allowed [Policy improperly given up to husband and surrendered by his mortgagee.]

(p) *Pride v. Fooks*, 2 Beav. 430; see *Byrchall v. Bradford*, 6 Mad. 13; S. C. Id. 235; and see *ante*, pp. 335, 336.

(q) *Fenwick v. Greenwell*, 10 Beav. 412.

(r) *Cleary v. Fitzgerald*, 7 L. R. Ir. 229.]

(s) *Devaynes v. Robinson*, 24 Beav. 86; *Sculthorpe v. Tipper*, 13 L. R. Eq. 232.

(t) *Marriott v. Kinnersley*, Tam. 470.

(u) Now so decided, *Hobday v. Peters* (No. 3), 28 Beav. 603.

(v) *Clack v. Holland*, 19 Beav. 273, 276, *per Cur.*; *Re Layton's Policy*, W. N. 1873, p. 49; and see *Johnson v. Swire*, 3 Giff. 194; *Todd v. Moorehouse*, 19 L. R. Eq. 69. [The only cases in which a lien upon the monies secured by a policy can be created in favour of a mere stranger, or a part owner by payment of premiums are the following: 1. By contract with the beneficial owner of the property. 2. By reason of the right of trustees to an indemnity out of their trust property for money expended by them in its preservation. 3. By subrogation to this right of trustees of some person who has at their request advanced money for the preservation of the property. 4. By reason of the right of a mortgagee to add to his charge any money paid by him to preserve the property; *Re Leslie*, 23 Ch. D. 552.]

(w) *Hill v. Trenery*, 23 Beav. 16; *Beresford v. Beresford*, Ib. 292.

<sup>1</sup> Where a trustee sold at an improper time, he was held to account for the highest value of the estate. *Melick v. Voorhees*, 2 N. J. Eq. 305.

ed the husband to get possession of the policy, whereupon he had received a bonus and mortgaged the policy, and the mortgagee had surrendered it; it was held that, although there were no funds available for keeping up the policy, the original trustee, inasmuch as there was a clear breach of trust in neglecting to give notice to the office and in parting with the possession of the policy, was liable for the amount of the bonus and of the moneys received on the surrender (x).

[Director accepting shares from promoters.]

16. Where a director of a company accepted fully paid up shares from the promoters, under circumstances which were held to amount to a misfeasance on his part, and the shares, which at one time had been worth £80 [\*904] a share, had become so much depreciated \* as to be worth only £1 a share, it was held that the director was a trustee of the shares for the company, that restitution of the shares by the director was not sufficient, but that the company might elect to have the value of the shares, and that the value was to be taken at £80 a share, which was to carry interest at £4 per cent. from the date of the transfer to the director (y).]

Neglect to give notice of assignment.

17. If the trustees of a marriage settlement taken by assignment *choses en action* of the husband, and neglect to give notice of the settlement to the persons in whom the *choses en action* are vested, and on the bankruptcy of the husband the *choses en action*, as left in his order and disposition with the consent of the true owner, become forfeited in favour of the creditors, it is apprehended that the trustees would be liable for their neglect of duty in not having given notice of the settlement, so as to take the property out of the order and disposition of the settlor (z).

Registration.

18. So if the trustee of a deed which requires *registration* to protect the property neglect to register it, he is answerable for the consequences (a).

Power imperative.

19. A trust is sometimes in the form of a *power imperative*; that is, a power which it is the bounden duty of the trustee to execute, and if through his neglect to execute it a loss arises he will be held responsible (b).

Receipt by person not a trustee, but acting as such.

20. If a person has *assumed to act as trustee*, and having received money in that character misapplies it, he is accountable for the proceeds to the *cestui que*

[(x) *Kingdon v. Castleman*, 46 L. J. N. S. Ch. 448.]

[(y) *Nant-y-Glo and Blaina Ironworks Company v. Grave*, 12 Ch. D. 738.]

(z) As to what particulars are within the operation of the clause, see [46 & 47 Vict. c. 52, s. 44, *ante*, p. 242.]

(a) *Macnamara v. Carey*, 1 Ir. Rep. Eq. 9.

(b) *Luther v. Bianconi*, 10 Ir. Ch. Rep. 194.

*trust*, and cannot defend himself by showing that in fact he was not legally a trustee (*c*), or that when he committed the breach he did not know who his *cestui que trust* was (*d*). But the trustee of a devised estate will not be accountable for property comprised in the devise, but the existence of which did not come to his knowledge, and which he was not bound to have discovered (*e*).

21. If an action be brought for an account and the plaintiff seeks \*relief against wilful default, he [ \* 905] default. must in his pleadings allege some *specific act* of wilful default (*f*), and *pray* consequential relief; and at the hearing must *prove* some act of wilful default, or at least establish a case for enquiry (*g*); and *à fortiori* where, at the original hearing, the common accounts only were directed, it is too late to ask relief on further directions against any wilful act that may have transpired accidentally in the course of other enquiries (*h*); and a trustee cannot be declared liable for wilful default upon a *common order* made at chambers for the administration of the testator's estate (*i*). But if the plaintiff pray an account with interest, and at the original hearing an account is directed, and in the course of the accounts improper balances appear to have been retained, interest on the balances may be asked for at the hearing on further directions (*k*). And if relief against a breach of trust be prayed, and at the original hearing the usual accounts only are directed, but with an enquiry who are the parties interested, it is not too late to ask relief against the breach of trust on further directions, as before that

(*c*) *Rackham v. Siddall*, 16 Sim. 297; affirmed on appeal to the extent of the interest of the plaintiff, the tenant for life, 1 Mac. & G. 607; *Pearce v. Pearce*, 22 Beav. 248; and see *Derbshire v. Home*, 3 De G. M. & G. 80; *Hope v. Liddell*, 21 Beav. 183; *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 58; *Hennessey v. Bray*, 33 Beav. 96; *Ex parte Norris*, 4 L. R. Ch. App. 280; *Yardley v. Holland*, 20 L. R. Eq. 428; *Smith v. Smith*, 10 Ir. Rep. Eq. 273.

(*d*) *Ex parte Norris*, 4 L. R. Ch. App. 280.

(*e*) *Youde v. Cloud*, 18 L. R. Eq. 634.

(*f*) *Bond v. McWatty*, 14 Ir. Ch. Rep. 174; *Wildes v. Dudlow*, W. N. 1870, pp. 85, 231; [and see *Mayer v. Murray*, 8 Ch. D. 424; *Smith v. Armitage*, 24 Ch. D. 727.]

(*g*) *Sleight v. Johnson*, 3 K. & J. 292.

(*h*) *Coope v. Carter*, 2 De G. M. & G. 292; *Askew v. Woodhead*, 28 L. T. N. S. 465; 21 W. R. 573.

(*i*) *Re Fryer*, 3 K. & J. 317; *Partington v. Reynolds*, 4 Drew. 253; *Re Delevante*, 6 Jur. N. S. 118; but see *Brooker v. Brooker*, 3 Sm. & G. 475.

(*k*) *Shaw v. Turbett*, 13 Ir. Ch. Rep. 476.

time the Court was not in a condition to deal with the question (l); [and under the modern practice where the statement of claim alleges wilful default the Court may at any stage of the proceedings direct accounts and enquiries upon that footing (m). But where there are allegations of wilful default or improper conduct on the part of the defendants, it is the duty of the plaintiff to be ready at the hearing to prove such allegations, and the Court will not, unless a strong case is made out for so doing, postpone the enquiry into the conduct of the trustees, where the plaintiff was not in a position at the hearing to go into the charges (n).] And in a *redemption suit* it is not necessary that the plaintiff should charge wilful default (o); nor is the case altered if the deed though in substance a security, be in the form of a deed of trust (p). And in a case under the old practice it was held that where *executors filed a bill* for the administration of their testator's estate, it was competent to a defendant to allege by his *answer* a case of wilful default by the executors, and that on proof of it at the hearing, the Court would give the necessary directions without obliging the defendant to file a cross bill (q). It is not competent to a remainderman to institute proceedings for relief against wilful default in respect of the *prior life estate*, for he has no interest in the income, but only in the corpus (r).

Suit against trustee's personal representative.

22. An executor or administrator of a trustee will be answerable for a breach of trust, though he may have distributed the assets amongst the legatees or next of kin without previous notice of the breach of trust (except it was done under the sanction of the Court (s), or under the provisions of Lord St. Leonards' Act, 22 & 23 Vict. c. 35, s. 29); and the Statute of Limitations affords him no protection (t): or the *cestui que trust*, if he has not been lying by while the rights of the de-

(l) *Pattenden v. Hobson*, 1 Eq. Rep. 28.

[(m) *Job v. Job*, 6 Ch. D. 562; *Re Symons*, 21 Ch. D. 757; *Mayer v. Murray*, 8 Ch. D. 424; and see *Laming v. Gee*, 10 Ch. D. 715.]

[(n) *Smith v. Armitage*, 24 Ch. D. 727.]

[(o) *Mayer v. Murray*, 8 Ch. D. 424.]

[(p) *O'Connell v. O'Callaghan*, 15 Ir. Ch. Rep. 31.

[(q) *Harvey v. Bradley*, 4 L. R. Eq. 13.

[(r) *Whitney v. Smith*, 4 L. R. Ch. App. 513.

[(s) *Knatchbull v. Fearnhead*, 3 M. & Cr. 122; *March v. Russell*, 3 M. & Cr. 31; *Low v. Carter*, 1 Beav. 423; *Hill v. Gomme*, Ib. 540; *Underwood v. Hatton*, 5 Beav. 39; *Waller v. Barrett*, 24 Beav. 413.

[(t) See p. 897, *ante*.

pendants have been varied by lapse of time (*u*), may recover the assets directly from the legatees or next of kin amongst whom they have been distributed (*v*).

23. The debt constituted by a *breach of trust* is even after it has been established by a decree an *equitable debt* only, and until the Bankruptcy Act, 1869, would not have supported a petition in bankruptcy (*w*). Breach of trust an equitable debt only.

24. The claim of the *cestui que trust* is in general a *simple contract debt*, and therefore, until the late Act, making a person's whole real and personal estate liable to his simple contract debts, it was recoverable, not from the real, but only from the personal estate. But if the trustee sign the trust deed and engage under his hand and seal, by words that amount to a covenant at law, to execute the trust, then the breach of trust becomes a specialty debt (*x*). Breach of trust constitutes simple contract debt, unless the trustee has covenanted.

25. If a [sole] trustee die insolvent and indebted to the trust estate, the personal representative of the trustee has a *right of retainer* in respect of the debt to the trust as against other creditors, and on the *cestuis que trust* requiring him to exercise such right of retainer, he is bound to do so (*y*). Retainer by personal representative of insolvent trustee.

\* 26. In awarding compensation to the [\* 907] *cestui que trust* against the trustee, the Court pays no regard to the circumstance whether the trustee *derived any actual advantage or not*, but proceeds upon the principle, that a trustee, who deviates from the line of his duty, is under an obligation to make good the loss to the *cestui que trust* (*z*): and if a trustee be guilty of misconduct, and a loss follows, the Court does not acquit him, because the loss was more immediately caused by some event wholly beyond the control of the trustee, Immaterial whether trustee was gainer or loser by the breach of trust.

(*u*) *Ridgway v. Newstead*, 3 De G. F. & J. 474.

(*v*) *March v. Russell*, 3 M. & Cr. 31; *Knatchbull v. Fearnhead*, 3 M. & Cr. 126; *Underwood v. Hatton*, 5 Beav. 38.

(*w*) *Ex parte Blencowe*, 1 L. R. Ch. App. 293. See 32 & 33 Vict. c. 71, s. 6, and *Ex parte Sturt & Co.* 13 L. R. Eq. 309; [and see now 46 & 47 Vict. c. 52, s. 6; which although not specially mentioning equitable debts includes them.]

(*x*) See *supra*, pp. 205, 206.

(*y*) *Sander v. Heathfield*, 19 L. R. Eq. 21; [*Crowder v. Stewart*, 16 Ch. D. 368; *Re Dunning*, 33 W. R. 760. But see *ante*, p. 831, as to the right of the creditors to have the estate administered in Bankruptcy.]

(*z*) See *Dornford v. Dornford*, 12 Ves. 129; *Raphæl v. Boehm*, 13 Ves. 411; *S. C.* Ib. 590, 591; *Moons v. De Bernales*, 1 Russ. 305; *Adair v. Shaw*, 1 Sch. & Lef. 272; *Lord Montford v. Lord Cadogan*, 17 Ves. 489; *Scurgeld v. Howes*, 3 B. C. C. 90; but see *Attorney-General v. Greenhouse*, 1 Bligh, N. S. 57-59.

such as fire, lightning, or other accident (a)<sup>1</sup>. "Although," said Lord Cottenham, "a personal representative acting *strictly* within the line of his duty, and exercising reasonable care and diligence, will not be responsible for the failure or depreciation of the fund in which any part of the estate may be invested, or for the insolvency or misconduct of any person who may have possessed it; yet if that line of duty be not strictly pursued, and any part of the property be invested by such personal representative in funds, or upon securities, not authorized, or be put within the control of persons who ought not to be entrusted with it, and a loss be thereby eventually sustained, such personal representative will be liable to make it good, however unexpected the result, however little likely to arise from the course adopted, and however free such conduct may have been from any improper motive" (b).

Case of trustee bringing a profit as well as a loss to the trust.

27. And a trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of a trust fund, cannot *set off against his liability a gain* which has accrued to another portion of the trust fund through another distinct and wholly unconnected breach of trust (c); and even in the *same matter*, where executors were directed to convert the testator's property and invest it in Government or real securities, and they allowed the tenant for life for eleven years to receive 10 per cent. on an Indian loan, and then invested the capital in a purchase of Bank Annuities, and the stock purchased was considerably more than could have been purchased with the same capital at the end of one year from the testator's death, they were not only made liable for the excess of interest paid to the tenant for life, but [\* 908] were disallowed their claim\* to set off against their liability the accidental advantage accruing to the trust from a purchase of a larger sum of Bank Annuities than could otherwise have been purchased from their *laches* in making the investment, and the depreciation of the funds during the interim (d).

Trustee not

28. A defaulting trustee will not be charged with *im-*

(a) See *Caffrey v. Darby*, 6 Ves. 496; *Cocker v. Quayle*, 1 R. & M. 535; *Fyler v. Fyler*, 3 Beav. 568; *Kellaway v. Johnson*, 5 Beav. 324; *Munch v. Cockerell*, 5 M. & Cr. 212; *Gibbins v. Taylor*, 22 Beav. 344.

(b) *Clough v. Bond*, 3 M. & Cr. 496.

(c) *Wiles v. Gresham*, 2 Drew. 258; see p. 271.

(d) *Dimes v. Scott*, 4 Russ. 195; and see *Fletcher v. Green*, 33 Beav. 426.

<sup>1</sup> *Dunn v. Dunn*, 1 S. C. 350; *Womack v. Austin*, ib. 421; *Sanders v. Rogers*, ib. 452.



*aginary values* (e); and being regarded as a mere chargeable stakeholder, he will not be liable for more than he has with imaginary actually received (f)<sup>1</sup>, except in cases of very supine nary values. negligence, or wilful default (g).

[29. Where a trustee neglected to get in certain gas [Liable for value of new allotted shares.] shares which formed part of the trust estate, and certain new shares were allotted in respect of the old gas shares, and were taken up by the person who had been allowed to hold the original shares, it was held that the trustee must make good the value of the new shares, less the amount of calls paid upon them, for they were an accretion to and, as such, part of the trust (h).

30. If trust money be advanced on an insufficient [Insufficient security.] security, the Court will not in an action instituted by one trustee against his co-trustees in the absence of the *cestuis que trust*, order the securities to be realised merely to ascertain the deficiency, for the *cestuis que trust* may prefer either to retain the securities or proceed to a foreclosure, and they cannot in their absence be deprived of their rights (i).]

31. Where co-trustees are jointly implicated in a Co-trustees breach of trust, the *cestui que trust*, though he obtains guilty of breach of a decree against the trustees jointly, may have process of execution against any of them separately (k); for as trust are regards the remedy of the *cestui que trust* there is no severally responsible primary liability, but each trustee is responsible for the whole loss. the entirety of the loss incurred (l). However, where the trustees are *in pari delicto* the decree is usually enforced against the trustees equally (m); and in one case, where a trustee had refused to accept\* the [\* 909] office unless another should be named with him, and the trust money be divided between them, so that each

(e) Palmer v. Jones, 1 Vern. 144.

(f) Harnard v. Webster, Sel. Ch. Ca. 53.

(g) Pybus v. Smith, 1 Ves. jun. 193, per Lord Thurlow; Palmer v. Jones, 1 Vern. 144, per Lord Nottingham.

[(h) Briggs v. Massey, 50 L. J. N. S. 747; varied on app. 51 L. J. N. S. 447.]

[(i) Butler v. Butler, 5 Ch. D. 554; 7 Ch. D. 116.]

(k) Ex parte Shakeshaft, 3 B. C. C. 197; Walker v. Symonds, 3 Sw. 74, 75; Attorney-General v. Wilson, Cr. & Ph. 28, per Lord Cottenham; Taylor v. Tabrum, 6 Sim. 281; Fletcher v. Green, 33 Beav. 426; and see Ex parte Angle, Barn. 425; Re Chertsey Market, 6 Price, 278, 279; Ex parte Norris, 4 L. R. Ch. App. 280; [Ex parte Craven, W. N. 1885, p. 21.]

(l) See Wilson v. Moore, 1 M. & K. 146; Lyse v. Kingdon, 1 Coll. 188; Richardson v. Jenkins, 1 Drew. 477; Alleyne v. Darcy, 4 Ir. Ch. Rep. 206; Jenkins v. Robertson, 1 Eq. Rep. 123.

(m) Rehden v. Wesley, 29 Beav. 215, per M. R.

<sup>1</sup> Staats v. Bingen, 1 Vroom, 181.

might be responsible for a moiety only, and this was accordingly done, but the trust deed was drawn in the usual form as if they were joint trustees of the whole sum, it was held, upon the insolvency of one of the trustees, that the co-trustee should not be answerable for more than the moiety paid to himself, the division of the trust money having been, Sir J. Leach observed, "a term in the creation of the trust" (n).

[Joint judgment against partners no merger of separate liability.]

[32. Where trust property is misappropriated by a firm so that the partners are jointly and severally liable to make good the loss, and the firm is adjudicated bankrupt on a judgment debt recovered against the firm by the owner of the trust property, the several liability of the partners is not, solely by reason of the creditor having recovered a joint judgment, merged in such judgment so as to preclude proof by the judgment creditor against the separate estates (o).]

Liability for the costs of suit.

33. Where the defendants are involved in a breach of trust, the Court decrees *costs* against them *jointly*, and does not distinguish between the relative culpabilities of the defendants (p). But where the plaintiff in pursuance of the decree recovered *all the costs* from a *single co-defendant*, the latter obtained an order in the same cause upon a motion (which however was not opposed) for contribution by the other defendants (q).

Liability and contribution as between the trustees themselves, or between them and other parties.

34. Though, as respects the remedy of the *cestui que trust*, each trustee is individually responsible for the whole amount of the loss, whether he was the principal in the breach of trust, or was merely a consenting party, yet, as between the trustees themselves, the loss may be thrown upon the party on whom, as recipient of the money or otherwise, the responsibility ought in equity to fall, or if he be dead upon his estate; and this claim of the innocent trustee (though formerly only a simple contract debt as between himself and his co-trustee, even where the breach of trust as between them and the *cestuis que trust* was a specialty debt), is now in such cases by the effect of the Mercantile Law Amendment Act (r) a specialty debt also (s). If all the trustees be equally guilty, then (unless the transaction was vitiated by not only constructive but such actual fraud, that the Court will hold itself entirely

(n) *Birls v. Betty*, 6 Mad. 90.

[(o) *Re Davison*, 13 Q. B. D. 50.]

(p) *Lawrence v. Bowle*, 2 Ph. 140; 1 C. P. Coop. t. Cott. 241.

(q) *Pitt v. Bonner*, 1 Y. & C. C. C. 670.

(r) 19 & 20 Vict. c. 97.

(s) *Lockhart v. Reilly*, 1 De G. & J. 464; *Priestman v. Tyndall*, 24 Beav. 244.

aloof (*t*),) an \* *apportionment* or *contribution* [\* 910] amongst the trustees may be compelled, which under the old practice was not allowed, in the same suit, but on a bill filed for the purpose (*u*). And if in the suit for recovery of the trust fund any benefit, as a legacy, be coming in the same matter to one of two defaulting trustee, the other trustee, if he pay the whole of what is due to the *cestuis que trust*, will have a *lien* on the legacy of the co-trustee for the amount of contribution he ought to pay (*v*).

[35. If a breach of trust be committed from which one of the trustees derives indirectly a personal benefit, the other trustees who were parties to the breach have no equity against the trustee deriving the benefit to make him primarily liable for the breach (*w*).] An executor who has been decreed to make good the loss incurred by his wilful default in not getting in part of the assets from the trustee of a settlement who has been allowed to retain and misappropriate them, is not thereby precluded from subsequently recovering from the trustee the amount misappropriated by him; *Scotney v. Lomer*, 29 Ch. D. 535. [One of the trustees gaining by breach not primarily liable.]

36. As between the trustees and a *third* person who has reaped the benefit of the breach of trust, though the trustees must make the disbursement in the first instance to the injured party, the loss will eventually be cast on the person who was the gainer by the breach of trust (*x*). But the circumstance that the breach of

The gainer by the breach of trust is ultimately liable.

(*t*) See *Lingard v. Bromley*, 1 V. & B. 114; *Tarleton v. Hornby*, 1 Y. & C. 336; *Attorney-General v. Wilson*, Cr. & Ph. 28.

(*u*) *Fletcher v. Green* (No. 2), 33 Beav. 513; *Attorney-General v. Dallgars*, 33 Beav. 624, *per Cur.*; *Coppard v. Allen*, 2 De G. J. & S. 177, *per L. J. Turner*; *Ex parte Shakeshaft*, 3 B. C. C. 198, *per Lord Thurlow*; *Lingard v. Bromley*, 1 V. & B. 114; *Perry v. Knott*, 4 Beav. 180, *per Lord Langdale*; and see *Knatchbull v. Fearnhead*, 3 M. & Cr. 122; *Pitt v. Bonner*, 1 Y. & C. C. C. 670; *Ex parte Burton*, 3 M. D. & De G. 373; *Baynard v. Woolley*, 20 Beav. 583; *Jesse v. Bennett*, 6 De G. M. & G. 609; and see *Wilson v. Goodman*, 4 Hare, 54; *Paull v. Mortimer*, W. N. 1873, p. 199; *Keogh v. Keogh*, 8 I. R. Eq. 179. But see now 36 & 37 Vict. c. 66, s. 24, subs. 3, and the 48th and following rules, and rule 55 of the 16th Order of the Rules of the Supreme Court, 1883; [and *Butler v. Butler*, 14 Ch. D. 329; and *Sawyer v. Sawyer*, W. N. 1883, p. 212; where an enquiry was directed how and in what proportions as between the trustees the sum to be paid to the plaintiffs should be borne and paid.]

(*v*) *Birks v. Micklethwait*, 33 Beav. 409.

[(*w*) *Butler v. Butler*, 5 Ch. D. 554; 7 Ch. D. 116.]

(*x*) *Trafford v. Boehm*, 3 Atk. 440; *Greenwood v. Wakeford*, 1 Beav. 580; *Booth v. Booth*, 1 Beav. 125; *Lord Montford v. Lord Cadogan*, 17 Ves. 485; 19 Ves. 635; S. C. 2 Mer. 3; *Birks v. Micklethwait*, 33 Beav. 409; and see *Howe v. Earl of Dart-*

trust was committed at the instance of a *cestui que trust* will not *per se* impose upon him the obligation of indemnifying the trustee generally. Thus in *Raby v. Ridehalgh* (y), where the *cestuis que trust*, the tenants for life, had instigated the breach of trust, L.J. Turner asked, "Has the Court in a suit of this nature ever gone the length of ordering the *cestuis que trust* personally to recoup the trustee?" and the Court directed [\* 911] the tenants for life to account \* to the trustee only for the monies which had been received by them under the breach of trust, and this has since been followed by other decisions (z).

The interest of parties committing a breach of trust may be stopped to compensate the trust.

37. If a *cestui que trust* whether tenant for life, or other person having a partial interest, be responsible for having joined in a breach of trust, all the benefit that would have accrued to him, either directly or derivatively (a), either from that trust fund, or any other estate comprised in the same settlement (b), may be stopped by the *cestuis que trust*, or other person having a similar equity, as against him, his assignees in bankruptcy (c), or judgment creditors (d), or general creditors (e); and (except so far as the defence of purchase for value without notice may be applicable) against all who claim under him (f), until the amount impounded with the accumulations thereon (g), has compensated the trust estate for the loss for which that *cestui que trust* is responsible. [And even an estate legally vested

mouth, 7 Ves. 150, 151; *Jacob v. Lucas*, 1 Beav. 436; *Lincoln v. Wright*, 4 Beav. 432; *Tickner v. Old*, 18 L. R. Eq. 422; *Vaughan v. Vanderstegen*, 2 Drew. 165, 363; *Hobday v. Peters* (No. 2), 28 Beav. 354; *Fetherstone v. West*, 6 I. R. Eq. 86.

(y) 7 De G. M. & G. 108.

(z) *Brown v. Maunsell*, 5 Ir. Ch. Rep. 351; *Bentley v. Robinson*, 9 Ir. Ch. Rep. 479; and see *Walsham v. Stainton*, 1 H. & M. 337; [*Butler v. Butler*, 5 Ch. D. 554; 7 Ch. D. 116.]

(a) *Jacubs v. Rylance*, 17 L. R. Eq. 341.

(b) *Woodyatt v. Gresley*, 8 Sim. 183; *Ex parte Mitford*, 1 B. C. C. 398; see *Priddy v. Rose*, 3 Mer. 105; *Burridge v. Row*, 1 Y. & C. C. C. 183, 583; *Lincoln v. Wright*, 4 Beav. 432, *per* Lord Langdale; *Fuller v. Knight*, 6 Beav. 205; *M'Gachen v. Dew*, 15 Beav. 84; *Vaughton v. Noble*, 30 Beav. 34.

(c) *Ex parte Turpin*, 1 D. & C. 120; *Ex parte Smith*, 1 Deac 143; *Ex parte King*, 2 M. & A. 410; *Prime v. Savell*, W. N. 1867, p. 227; *Jacubs v. Rylance*, 17 L. R. Eq. 341; see *Smith v. Smith*, 1 Y. & C. 338; *Burridge v. Row*, 1 Y. & C. C. C. 183, 583; [*Corr v. Corr*, 3 L. R. Ir. 435.

(d) *Kilworth v. Mountcashell*, 15 Ir. Ch. Rep. 565.

(e) *Williams v. Allen* (No. 2), 32 Beav. 650.

(f) *Woodyatt v. Gresley*, 8 Sim. 180; *Priddy v. Rose*, 3 Mer. 86; *Cole v. Muddle*, 10 Hare, 186; and see *Morris v. Livie*, 1 Y. & C. C. C. 380.

(g) *Ex parte King*, 2 M. & A. 410.

in the wrongdoer by the settlement (being an instrument *inter vivos*) may by virtue of an implied contract be made available for repairing the breach of trust (*h*), but the doctrine cannot be extended to a *legal* devisee as there no contract can be implied, and in the absence of contract a Court of equity has no control over the estate (*i*).] And the rule applies to a *feme covert* entitled to her separate use [with no restraint on anticipation, if she had full knowledge of all the circumstances and acted independently in the transactions which constituted the breach of trust, but she will not be held liable merely because she acquiesced in or approved of the breach of trust unless she took part in it (*k*); and she will not be liable] where her power of anticipation is restrained (*l*); and if the *cestui que trust* be one of three trustees and joined with the co-trustees in a breach of trust, and the co-trustees have been made to repair the breach of trust, the co-trustees have a lien on the share of the *cestui que trust*, who is also a trustee, for a contribution of one-third, but without interest, towards the amount paid by them for clearing the joint breach of trust (*m*). It was contended in one case, that where an estate was *devised* to a person who was a *debtor to the testator*, the debt was a *lien on the devised estate*, but the Court not finding any precedent did not allow the claim (*n*).

38. If the trustee become *bankrupt*, the loss may be proved against his estate (*o*), and without proceeding in equity to establish the breach of trust (*p*), and if interest would have been decreed in equity against the trustee himself, it will constitute part of the debt in the proof against his estate in the hands of his trustee in bankruptcy (*q*), and if the breach of trust was a *sale of stock*, the *cestui que trust* may, at his option, prove for the proceeds of the sale, or for the value of the stock

[(*h*) *Woodyatt v. Gresley*, 8 Sim. 180.]

[(*i*) *Egbert v. Butter*, 21 Beav. 560; *Fox v. Buckley*, 3 Ch. D. 508; and see *Ex parte Barff*, De Gex, 613.]

[(*k*) *Sawyer v. Sawyer*, 28 Ch. D. 595; and see *ante*, p. 768.]

(*l*) See pp. 759, 787, *supra*.

(*m*) *Prime v. Savell*, W. N. 1867, p. 227.

(*n*) *Ex parte Barff*, De Gex, 613.

(*o*) *Keble v. Thompson*, 3 B. C. C. 112; *Moons v. De Bernales*, 1 Russ. 301; *Dornford v. Dornford*, 12 Ves. 127; *Ex parte Shakeshaft*, 3 B. C. C. 197; *Bick v. Motley*, 2 M. & K. 312; *Lincoln v. Wright*, 4 Beav. 427; [46 & 47 Vict. c. 52, s. 37.]

(*p*) *Ex parte Norris*, 4 L. R. Ch. App. 280.

(*q*) *Dornford v. Dornford*, 12 Ves. 127; *Bick v. Motley*, 2 M. & K. 312; *Moons v. De Bernales*, 1 Russ. 301.

at the date of the bankruptcy (*r*), and if the bankrupt be a debtor to the trust, and entitled himself to a *reversionary* interest in the debt, the trustee may nevertheless prove for the whole debt, without any set-off for the reversionary interest (*s*). And if a trustee prove for the whole debt he may still retain any beneficial interest of the bankrupt in the trust estate by way of lien or set-off in further discharge of the debt (*t*), [for the trustee cannot be allowed by an act of this kind to prejudice the *cestuis que trust* (*u*).] But if an executor who represents the absolute ownership of the personal estate prove for the whole debt, it is deemed a waiver of any lien which the executor might otherwise have had upon the bankrupt's interest in such personal estate (*v*), and if the bankrupt, in whose hands the trust fund was, be one of the trustees, and indebted to the trust estate, and also have a *present* beneficial interest in the trust, proof cannot be made for the whole amount, but only for the balance, after setting off the bankrupt's beneficial interest against the debt due from him (*w*). [ \* 913 ] \* [39. If one of two trustees becomes bankrupt and is a debtor to the trust estate, and a balance is found due to the two trustees in taking their accounts, the balance will not be set off against the debt of the bankrupt trustee to the prejudice of the solvent trustee, but an account will be directed, so as to ascertain how much of the balance is due to the solvent trustee and how much to the bankrupt trustee, and the set-off will be confined to the latter account (*x*).]

[Where one trustee a bankrupt but balance due to the trustees on the accounts.]

Trustee a partner and lending the trust money to the firm with notice.

40. If the trustee was *one of a bankrupt firm*, to which the trust money had been lent, proof may be made either against the *joint estate* of the firm, or the *separate estate* of the bankrupt trustee, and of any other of the partners who may have constituted themselves trustees or taken an active part in the breach of trust (*y*);

(*r*) *Ex parte* Shakeshaft, 3 B. C. C. 197; *Ex parte* Gurner, 1 M. D. & De G. 497; and see *Ex parte* Moody, 2 Rose, 413; *Ex parte* Stuteley, 1 M. D. & De G. 643.

(*s*) *Ex parte* Stone, 8 L. R. Ch. App. 914.

(*t*) *Ex parte* Dickens, Buck, 115.

[(*u*) *Per* Lord Chelmsford, L. C., *Stammers v. Elliot*, 3 L. R. Ch. App. 200.]

(*v*) *Stammers v. Elliott*, 3 L. R. Ch. App. 195.

(*w*) *Ex parte* Turner, 2 De G. M. & G. 927; *Ex parte* Bishop, 8 L. R. Ch. App. 768.

[(*x*) *McEwan v. Crombie*, 25 Ch. D. 175.]

(*y*) *Ex parte* Heaton, Buck, 386; *Ex parte* Watson, 2 V. & B. 414; *Smith v. Jameson*, 5 T. R. 601; *Ex parte* Bolland, 1 Mont. & Mac. 315; *Ex parte* Poulson, De Gex, 79; *Ex parte* Barnewall, 6 De G. M. & G. 801.

but not against both the joint and separate estates (z), and if the bankrupt had laid out the trust money on a mortgage, the *cestui que trust* is not put to his election whether he will prove for the debt, and abandon the mortgage, or take the mortgage and abandon the debt, but may prove for the debt, and have the benefit of the mortgage also (a): and if the trust money had been invested, but improperly, the *cestui que trust* has a right to elect to prove for the money and interest, or for the value of the securities and profits (b).

41. If the trustee was *not one of the firm*, but he lent the trust fund to the bankrupt *firm*, proof can be made as for an ordinary debt against the joint estate. If the trustee lent the money, not to the firm, but to *one of the members* of the firm, and the partners had *no notice* of the source from which it came, proof can only be made against the separate estate of the partner who received, though the money may, in fact, have been applied to partnership purposes (c). But if the other partners had notice of the source of the money, proof can be made against the joint estate of the firm (d), but not, it seems, against the separate estate of each partner (e); unless the firm by their dealings with the *cestui que trust* constituted themselves trustees *directly* for them (f). Nor can proof be made on \* the [\* 914] mere ground of *notice* for the *profits* made by the *use* of the money, for the partners in the firm are regarded not as *actual* but only as *constructive* trustees, that is, having notice of the trust they are accountable for the money, but not being clothed with any special duty, they do not come within the rule that "a trustee shall not profit by his trust" (g).

Trustee not a partner and lending money to the firm or the partners.

42. It was held by Lord Romilly, M. R., that where a trustee had proved against a bankrupt's estate for 6985l. 19s. 7d. *principal* money made away with by the bankrupt, and for 2744l. 9s. 11d. *interest* (which should have

Appertionment between tenant for life and remaindermen of amount recovered from bankrupt trustee.

(z) *Ex parte* Barnewall, 6 De G. M. & G. 795.

(a) *Ex parte* Biddulph, 3 De G. & Sm. 587; *Ex parte* Geaves, 8 De G. M. & G. 291; 25 L. J. N. S. Bank. 53.

(b) *Re* Montefiore, 9 Jur. 562.

(c) *Ex parte* Apsey, 3 B. C. C. 265; *Ex parte* Wheatley, Cooke's Bankrupt Law, 534, 8th ed.

(d) *Ex parte* Peele, 6 Ves. 602; *Ex parte* Clowes, 2 B. C. C. 595; and see *Ex parte* Burton, 3 M. D. & De G. 364; *Ex parte* Bolland, 1 Mont. & Mac. 315.

(e) *Ex parte* Beilby, 1 Gl. & J. 167, and see *Ex parte* Burton, 3 M. D. & De G. 364; *Ex parte* Woodin, 3 M. D. & De G. 399.

(f) *Ex parte* Woodin, 3 M. D. & De G. 399.

(g) *Stroud v. Gwyer*, 28 Beav. 130; see 141; and see *Ex parte* Burton, 3 M. D. & De G. 364.

been paid to the tenant for life), making together a sum total of 9730*l.* 9*s.* 6*d.*, all dividends received under the bankruptcy should first make up the lost capital, and that the tenant for life had no lien for his lost income, but was entitled only to the interest of the capital sums received by way of dividend under the bankruptcy (*h*). The natural course would have been to apportion the fund as between the tenant for life and remaindermen according to their respective losses, as otherwise it would work occasionally a great hardship. Suppose for instance the tenant for life, though entitled for the last ten years, had received nothing and then died before the dividend was paid. The whole would go to the remainderman, and the executor of the tenant for life would receive nothing, though a large part of the dividend was recovered in respect of the life estate (*i*).

Since these remarks were written, the case has in effect been overruled. In *Cox v. Cox* (*k*), A. covenanted on his marriage that his executors, within three months after his death should pay to the trustees a sum of 6,000*l.* with interest, from his death, at 4 per cent., to be held in trust for his widow for life, with remainder to the children. A. died in 1862, and his estate was administered by the Court. The assets were insufficient to satisfy the principal and interest, and the question was, how the amount recovered was to be dealt with as between the tenant for life and the remaindermen, and V. C. Sir W. James said, "The true principle in all these cases is, that neither the tenant for life nor the remainderman is to gain an advantage over the other, neither is to suffer more damage in proportion to his estate and interest than the other suffers from the default of the obligor. Assuming that 5500*l.* is the sum that will be recovered, a calculation must be made [ \* 915] back, \* What principal, if invested on the day of the obligor's death (the date from which interest was to run) at 4 per cent. would amount with interest to the sum so recovered? Interest at 4 per cent. on this principal, or in other words the difference between the principal and the amount will then go to the tenant for life, and the rest must be treated as principal."

[Of proceeds  
of sale of  
mortgaged  
property.]

[So where money had been properly invested upon mortgage, but the interest fell into arrear and the mortgaged property was ultimately realized, and the pro-

(*h*) *Re Grabowski's Settlement*, 6 L. R. Eq. 12.

(*i*) See *Innes v. Mitchell*, 1 Ph. 710, and *Turner v. Newport*, 2 Ph. 14, which were not cited to M. R.

(*k*) 8 L. R. Eq. 343; and see *Re Tinkler's Estate*, 20 L. R. Eq. 456.



ceeds were insufficient to pay the principal and interest, it was held that the proceeds were apportionable between capital and income in the ratios of the capital sum originally invested and the actual arrears of simple interest on the mortgage (*l*).]

43. The original trust debt was formerly barred by the certificate of the bankrupt, though no proof was made, and the *cestui que trust* did not know of the misapplication of the trust fund (*m*). But it was the duty of the trustee to see that *some person* proved on behalf of the trust, and if he did not, he was liable in equity for this neglect of duty: and though he had obtained his certificate he was held responsible personally for the amount that might have been received by way of dividend (*n*). And a demand in respect of a breach of trust was held to be equally barred by the trustee's discharge under the Insolvent Acts, provided the liability was duly mentioned in the schedule (*o*).

How far trust debt barred by the bankrupt's certificate.

44. If the bankrupt was one of two *co-trustees*, who were jointly implicated in a breach of trust, then proof may be made against the bankrupt's estate for the whole money lost, though he was not the party benefited by the breach of trust (*p*), and though the other trustee be living and solvent (*q*). And the proof against the bankrupt will not be precluded by a *bond* given not to sue the other trustee, reserving the right against all other parties (*r*), though a *release* to the other trustee, being an extinguishment of the debt, would prevent any subsequent proof (*s*).

Proof where one of several trustees is bankrupt.

45. So if two *co-trustees* be bankrupts, proof may be made against the estate of each (*t*); but of course more than 20s. in the pound cannot be received in the whole; or, at the same time that \* proof is made against [ \* 916 ] the estate of one who is a bankrupt, legal proceedings may be taken against the solvent trustee; for *proof* under a bankruptcy is not *payment* (*u*).

Co-trustees bankrupts.

[*(l)* *Re Moore*, W. N. 1885, p. 17.] *Re Moore* is now reported in 54 L. J. N. S. Ch. 432.

(*m*) *Ex parte Holt*, 1 Deac. 248.

(*n*) *Orrett v. Corser*, 21 Beav. 52; and see *Woodhouse v. Woodhouse*, 8 L. R. Eq. 521.

(*o*) *Thompson v. Finch*, 22 Beav. 316, on appeal, 8 De G. M. & G. 560.

(*p*) *Ex parte Shakeshaft*, 3 B. C. C. 197.

(*q*) *Ex parte Beilby*, 1 Gl. & J. 167.

(*r*) *Ib.*

(*s*) See *Blackwood v. Borrowes*, 2 Conn. & Laws. 478.

(*t*) *Keble v. Thompson*, 3 B. C. C. 112; *Ex parte Poulson*, De Gex, 79.

(*u*) *Ex parte King*, 1 Deac. 164, &c.

Contribution. 46. But where the whole debt is proved against the estate of the bankrupt trustee, the trustee in bankruptcy may afterwards take proceedings, and compel contribution from the other trustee (*v*), even where the bankrupt trustee himself could not, from his fraudulent conduct, have obtained such relief (*w*).

Trust money authorized to be employed in trade. 47. Where a testator has *authorized the employment of his estate in trade*, if the firm in which it was employed become bankrupt, proof cannot be made against the estate of the bankrupts in respect of the money so employed; for it is not a debt of the firm, but merely capital brought into it: but, when the joint creditors have been satisfied, the trustee member of the firm may, as one of the partners, establish a balance, if there be one, against the separate estates of the co-partners (*x*).

32 & 33 Vict. c. 71. 48. By the Bankruptcy Act, 1869 (*y*), a bankrupt after, and notwithstanding his order of discharge, remains liable to his *cestui que trust* for a breach of trust. But as the breach of trust constitutes a debt, which may be proved for in the bankruptcy, the debtor is protected from all other proceedings against him for the breach of trust until after his discharge, when the creditor may proceed either against him personally or against his property, as if no bankruptcy had intervened (*z*). [The section applies to the breach of a constructive trust as well as that of an express trust (*a*).

[46 & 47 Vict. c. 52.] By the Bankruptcy Act, 1883 (*b*), the liability of a bankrupt to his *cestui que trust* continues after his discharge only in cases where the breach of trust is *fraudulent*.]

The Debtors Act, 1869. 49. The Debtors Act, 1869 (*c*), abolishes arrest and imprisonment for debt, but excepts, amongst other things, default by a trustee or person acting in a fiduciary capacity (*d*), and ordered to pay by a \* Court

(*v*) See *Ex parte Shakeshaft*, 3 B. C. C. 197; *Lingard v. Bromley*, 1 V. & B. 114.

(*w*) See *Muckleston v. Brown*, 6 Ves. 68; *Joy v. Campbell*, 1 Sch & Lef. 335, 339; *Ottley v. Browne*, 1 B. & B. 360.

(*x*) *Scott v. Izon*, 34 Beav. 434; and see *M'Neillie v. Acton*, 2 Eq. Rep. 21.

(*y*) 32 & 33 Vict. c. 71, s. 49.

(*z*) *Cobham v. Dalton*, 10 L. R. Ch. App. 655; [*Emma Silver Mining Company v. Grant*, 17 Ch. D. 122; *Cooper v. Prichard*, 11 Q. B. D. 351; and see *Nowell v. Nowell*, W. N. 1876, p. 248.]

[(*a*) *Emma Silver Mining Company v. Grant*, 17 Ch. D. 122.]

[(*b*) 46 & 47 Vict. c. 52, s. 30.]

(*c*) 32 & 33 Vict. c. 62, s. 4.

[(*d*) The term "person acting in a fiduciary capacity" means a person standing in a fiduciary relation towards any other person

of equity (*e*) any sum in his possession or under his control. [A trustee who has once had trust funds in his possession is treated by a Court of equity as still having them in his possession until he has properly discharged himself, and it is not necessary, to bring a trustee within the exception, that he should have the trust funds in his actual possession, or under his control, at the time the order is made. Thus if an order be made upon a trustee to repay a sum which he had previously misappropriated and spent, he may be attached for neglecting to obey the order (*f*): So where two trustees, A. and B., received a sum of money and placed it in a bank to their joint account, but made payable to the cheque of A. alone, who drew it out and misapplied it, and thereupon B. was ordered in a suit to make it good, it was held that B. on non-payment was liable to be attached and sent to prison (*g*).] But a trustee who had been ordered to pay a sum of money which he had neglected only in breach of his duty to recover, was held not to fall within the exception and could not therefore be arrested and imprisoned (*h*).

[50. By a subsequent Act (41 & 42 Vict. c. 54), the [The Debtors Court is empowered among other things "to enquire Act, 1878.] into the case of a defaulting trustee, and to grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process, or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder." Under this section the Court has refused to issue a writ of attachment against a defaulting trustee, where it appeared that he was unable to pay, and that no good purpose could be served by sending him to prison (*i*). But as the Debtors Act, 1869, while abolishing the penalty of imprisonment for debt in the case of an honest debtor was intended for the punishment of a fraudulent or dishonest debtor, and as it was not

whether such other person is, or is not, the plaintiff or one of the plaintiffs in the action in which the order for payment has been made; *Marris v. Ingram*, 13 Ch. D. 338.]

[*(e)* Under section 76 of the Judicature Act, 1873, the words "the High Court of Justice," should be read in substitution for the words "a Court of equity," *Marris v. Ingram*, 13 Ch. D. 338.]

[*(f)* *Middleton v. Chichester*, 6 L. R. Ch. App. 152; *Marris v. Ingram*, 13 Ch. D. 338; *Re Knowles*, *Doodson v. Turner*, 52 L. J. N. S. Ch. 685; 48 L. T. N. S. 760.]

[*(g)* *Evans v. Bear*, 10 L. R. Ch. App. 76.]

[*(h)* *Ferguson v. Ferguson*, 10 L. R. Ch. App. 661.

[*(i)* *Street v. Hope*, 10 Ch. D. 286 n.; *Barrett v. Hammond*, 10 Ch. D. 285.]

intended by the Amendment Act to get rid of the penal clauses of the previous Act, but only to give the judges a judicial discretion to deal with exceptional cases, the Court ought, in the case of a dishonest debtor, to send him to prison, unless it is satisfied that he has no means of satisfying the debt (*k*); and in a recent case in [ \* 918 ] \* which the Court was not satisfied that the debtor was unable to pay, Kay, J., observed, "I think that this is the case in which the punishment ought to be inflicted for the purpose of teaching this man that a dishonest act of this kind will not be passed over with impunity even though he is unable to pay, and for the purpose of teaching other trustees the same lesson" (*l*). But where there had been no actual fraud or embezzlement, but only an erroneous application of the trust funds, the Court upon the trustee undertaking to execute a charge upon all the property to which he was or might become entitled, declined to attach him for having failed to comply with an order for payment of the trust fund into Court (*m*).]

In assigning to the *cestui que trust* the foregoing remedies against the trustee, it must be understood that the *cestui que trust* has not himself concurred in the breach of duty, or subsequently acquiesced in it, and, *à fortiori*, has not executed a formal release or confirmation.

#### I. Of concurrence.

Concurrence of the *cestui que trust* in the breach of trust.

1. If a *cestui que trust* concur in the breach of trust he is for ever estopped from proceeding against the trustee for the consequences of the act (*n*), and *à fortiori* a *cestui que trust*, who is also a trustee, cannot hold his co-trustee responsible for any act in which they both joined (*o*).

[*(k)* Marris v. Ingram, 13 Ch. D. 338.]

[*(l)* *Re Knowles, Doodson v. Turner*, 52 L. J. N. S. Ch. 685; 48 L. T. N. S. 60.]

[*(m)* *Holroyde v. Garnett*, 20 Ch. D. 532.]

[*(n)* *Brice v. Stokes*, 11 Ves. 319, and *Walker v. Symonds*, 3 Sw. 64, *per* Lord Eldon; *Wilkinson v. Parry*, 4 Russ. 272; *Cocker v. Quayle*, 1 R. & M. 535; *Nail v. Punter*, 5 Sim. 555; *Newman v. Jones*, Rep. t. Finch. 58; and see *Fellows v. Mitchell*, 1 P. W. 81; *Booth v. Booth*, 1 Beav. 125; *Langford v. Gascoyne*, 11 Ves. 336; *White v. White*, 5 Ves. 555; *Re Chertsey Market*, 6 Price, 280, 284; *Baker v. Carter*, 1 Y. & C. 255; *Byrchall v. Bradford*, 6 Mad. 13; *Morley v. Lord Hawke*, cited in *Small v. Attwood*, 2 Y. & J. 520; *Fyler v. Fyler*, 3 Beav. 550; *Griffiths v. Porter*, 25 Beav. 236; *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 74; *Ex parte Barnewall*, 6 De G. M. & G. 801.

[*(o)* *Butler v. Carter*, 5 L. R. Eq. 281, *per Cur.*

2. But persons cannot be held to have concurred in a breach of trust who had not the means of knowing that the acts to which they were parties involved a breach of trust (*p*).

3. And persons cannot *concur* in a breach of trust, who, as *femes covert* (*q*) and infants (*r*), have no legal capacity to consent to the transaction.

\* 4. But neither coverture nor infancy will [\* 919] be a protection from a charge of *fraud*, and therefore, if a *feme covert* (*s*), or infant (*t*), draw in a trustee to commit a breach of trust, such *feme covert* or infant cannot afterwards call the trustee to account for having violated his duty<sup>1</sup>.

5. A *feme covert* will be bound by her concurrence in a breach of trust as to any fund which is settled to her *separate use*, where there is no *restraint against anticipation* (*u*) and such *feme covert*, if she execute a deed, will not be allowed to controvert the statements of facts contained in the deed (*v*). But she will not be estopped upon the ground of concurrence where the act was not voluntary, but her judgment was misled, or she was under undue influence (*w*). And a *feme covert* has no power to concur in any act as to a fund settled to her *separate use*, where there is a *restraint against anticipation* (*x*).

(*p*) *Buckeridge v. Glasse*, Cr. & Ph. 135, *per* Lord Cottenham.

(*q*) *Ryder v. Bickerton*, cited *Walker v. Symonds*, 3 Sw. 80; *Underwood v. Stevens*, 1 Mer. 717; *Smith v. French*, 2 Atk. 243; *Needler's case*, Hob. 225; *Lench v. Lench*, 10 Ves. 517, *per* Sir W. Grant; *Lord Montford v. Lord Cadogan*, 19 Ves. 639, 640, *per* Lord Eldon; and see *Parkes v. White*, 11 Ves. 221; *Bateman v. Davis*, 3 Mad. 98; *Cresswell v. Dewell*, 4 Giff. 460.

(*r*) See *supra*, pp. 37, 39; and *Wilkinson v. Parry*, 4 Russ. 276.

(*s*) *Ryder v. Bickerton*, cited *Walker v. Symonds*, 3 Sw. 82, *per* Lord Hardwicke; and see *Savage v. Foster*, 9 Mod. 35; *Lord Montford v. Lord Cadogan*, 19 Ves. 640; *Vandebende v. Levingston*, 3 Sw. 625; *Evans v. Bicknell*, 6 Ves. 181; *Jones v. Kearney*, 1 Dru. & War. 166; *Davies v. Hodgson*, 25 Beav. 187; *Sharpe v. Foy*, 4 L. R. Ch. App. 35; *Re Lush's Trusts*, 4 L. R. Ch. App. 591; *Green v. Lyon*, 21 W. R. 695, reversed on the facts, *ib.* 830; *Arnold v. Woodhams*, 16 L. R. Eq. 33 *per Cur*; [*Cahill v. Cahill*, 8 App. Cas. 437; see *S. C. nom. Cahill v. Martin*, 5 L. R. Ir. 227; 7 L. R. Ir. 361.]

(*t*) See the cases at note (*h*) p. 39, *supra*.

(*u*) See *ante*, p. 759.

(*v*) *Keays v. Lane*, 3 I. R. Eq. 8, *per Cur*.

(*w*) *Whistler v. Newman*, 4 Ves. 129; *Hughes v. Wells*, 9 Hare, 773; and see *Walker v. Shore*, 19 Ves. 393.

(*x*) *Cocker v. Quayle*, 1 R. & M. 535; *Walrond v. Walrond*, Johns. 24; *Leedham v. Chawner*, 4 K. & J. 465; *Clive v. Carew*,

<sup>1</sup> *Davis v. Tingle*, 8 B. Mon. 359; *Stoolfoos v. Jenkins*, 12 S. & R. 399.

Power of appointment. And her concurrence will not operate beyond the interest settled to her separate use, though she have a *power of appointment* in addition; as if a *feme* be tenant for life to her separate use, with a power of appointing the *corpus* by *will*, though her concurrence would affect the life interest, it does not prevent the appointees under the will from holding the trustees responsible (*y*). [But if the trustees are by reason of any engagement entered into by the *feme covert* entitled to be indemnified out of her estate it seems that under the principles established by the recent authorities, to be presently mentioned, the trustees could resort to the appointed fund as part of the *feme's* assets for their indemnity (*z*).

Property subject to power becomes assets on exercise of power. 6. The question whether property subject to a power of appointment in a married woman becomes, on her exercising the power, assets available for the satisfaction of her engagements has been \*the subject of conflicting opinions, and in *Johnson v. Gallagher* (*a*), was treated by Turner, L. J., as an open question on the authorities, though a distinction was drawn where the *feme covert* was guilty of fraud; and it was held by V. C. Kindersley, who on the general question was of opinion that the appointed funds were not assets (*b*), that] if an estate were settled to the separate use of a *feme covert* for life, with a general power of appointment by will, and in default of appointment to her in fee, and she suppressed her real name, and holding herself out as a *feme sole*, mortgaged the estate, the mortgagee had a *lien* upon the estate as against the heir or appointee (*c*). [The modern cases, however, seem to have established, independently of the provision in the Married Women's Property Act, 1882,

1 J. & H. 199; *Pemberton v. McGill*, 8 W. R. 290; *Fletcher v. Green*, 33 Beav. 426; *Arnold v. Woodhams*, 16 L. R. Eq. 29; [*Stanley v. Stanley*, 7 Ch. D. 589; *Heath v. Wickham*, 3 L. R. Ir. 376; 5 L. R. Ir. 285;] and see *Wilton v. Hill*, 25 L. J. N. S. Ch. 156; *Derbshire v. Home*, 3 De G. M. & G. 102, 113.

(*y*) *Kellaway v. Johnson*, 5 Beav. 319,

[(*z*) See *Williams v. Lomas*, 16 Beav. 1.]

[(*a*) 3 De G. F. & J. 494, 517; see *Norton v. Turvill*, 2 P. W. 144; *Heatley v. Thomas*, 15 Ves. 596; *Socket v. Wray*, 4 B. C. C. 483; *Hughes v. Wells*, 9 Hare 749; *Vaughan v. Vanderstegen*, 2 Drew. 165; *Blatchford v. Woolley*, 2 Dr. & Sm. 204; *Hobday v. Peters* (No. 2), 28 Beav. 354; *Shattock v. Shattock*, 2 L. R. Eq. 182; Sugd. on Powers, 8th ed. p. 476.]

[(*b*) *Vaughan v. Vanderstegen*, 2 Drew. 165; *Blatchford v. Woolley*, 2 Dr. & Sm. 204.]

(*c*) *Vaughan v. Vanderstegen*, 2 Drew. 363; and see *Hobday v. Peters* (No. 2), 28 Beav. 354; [*Barrow v. Manning*, W. N. 1878, p. 122.]

that the property becomes, on her exercising the power, assets, for the payment of her debts as if it were her separate estate. Thus in a recent case in the Privy Council] where there was fraud, and the *feme covert* had a general power of appointment *either* by instrument *inter vivos* or by will, [which she exercised by will, it was] held that the general engagements of the wife were payable out of the property so settled (*d*), and the Court went so far as to say, in the broadest terms, that such a settlement amounts in effect to what in common sense and to common apprehension it would be, viz., an absolute gift to the sole and separate use, and that such a form of settlement on a married woman, without restraint of anticipation, vests in equity the entire *corpus* in her for all purposes as fully as a similar gift to a man would vest in him (*e*). The actual decision of the case in which this general doctrine was laid down was clearly supportable on the ground that there had been an imperfect execution of the power, and there being valuable consideration equity would supply the defect; and the Court did not mean what the generality of the expressions would imply, that where the *power is not executed* the property is available for the *feme covert's* engagements, for the Court expressly approved the doctrine laid down by Sir G. Turner, that where there is a limitation over in default of \* appointment and the power has not been [ \* 921 ] exercised, the engagements of the married woman cannot prevail against the parties entitled in default of appointment (*f*). Nor did the Court *decide* even where the *power is executed* that the settled property will be available for payment of such general engagements as are merely verbal and not evidenced by any written instrument, or appear by any writing which is not an execution of the power at law, and would not be aided in equity for want of sufficient consideration.

Whether property bound by general engagements where power not executed

[7. However, in a later case, where personal property was settled upon such trusts as a *feme covert* should during coverture by deed or will appoint, and, subject thereto, for her separate use for life, and if she survived her husband (an event which happened) for her absolutely, and the *feme covert* appointed the property by will, the late M. R. held that the property was bound

(*d*) London Chartered Bank of Australia v. Lemprière, 4 L. R. P. C. 572, and see Brewer v. Swirles, 2 Sm. & G. 219.

(*e*) London Chartered Bank of Australia v. Lemprière, 4 L. R. P. C. 595.

(*f*) S. C. 592.

by the *feme covert's* general engagements, and he observed, "The true view seems to be this: that for the purpose of giving effect to the general engagements of a married woman, if property is settled upon her for life, with power to dispose of it by deed or will, that is her separate property, so as to be subject to her general engagements" (*g*). It is conceived that this proposition in which no distinction is made between cases where the power is executed, and those in which it is not executed and there is a gift over in default of execution, cannot, consistently with the earlier authorities (*h*), be taken in its broadest sense, and the question to what extent the general engagements of a *feme covert* bind property settled upon her for life for her separate use with a general power of appointment by deed or will, and a gift over in default of appointment *where the power is not executed*, must still be considered as governed by the earlier authorities (*i*).

8. In a still later case, where property was settled on a *feme covert* for life for her separate use with a general power of appointing by will, with a gift over in default of appointment, V. C. Hall held that the property appointed by her will was assets for the payment of her debts in the same manner as if it had belonged to her for her separate use (*k*), and this has since been acted upon (*l*).

9. Where a married woman was tenant for life for [\* 922] her separate \* use without power of anticipation, and the trustees were "at her direction to direct repairs and do all such acts as should be proper for that purpose," and the tenant for life herself ordered the repairs, the Court gave effect to the particular engagement out of the particular power to direct repairs and treated the power as being in effect exercised, and directed the trustees to raise the amount required for the repairs which had been executed, and to pay the amount to the builder employed by the tenant for life (*m*).

---

[*g*] *Mayd v. Field*, 3 Ch. D. 587, 593; *Skinner v. Todd*, 51 L. J. N. S. Ch. 198.]

[*h*] See *Johnson v. Gallagher*, 3 De G. F. & J. 494, and the cases there cited.]

[*i*] See also *Holmes v. Coghill*, 7 Ves. 499; 12 Ves. 206; Sugd. on Powers, 8th ed. pp. 475, 477.]

[*k*] *Re Harvey's Estate*, 13 Ch. D. 216; see however the observations on this case by L.J. Cotton in *Pike v. Fitzgibbon*, 17 Ch. D. 466.]

[*l*] *Hodgson v. Williamson*, 15 Ch. D. 87; *Hodges v. Hodges*, 20 Ch. D. 749.]

[*m*] *Skinner v. Todd*, 51 L. J. N. S. 198.]



10. Now by the Married Women's Property Act, [45 & 46 Vict. 1882 (*n*), sect. 4, it is provided, that the execution of a c. 75, s. 4.] general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, in the same manner as her separate estate is made liable under the Act.]

## II. Of acquiescence.

1. Again, a *cestui que trust*, though he did not con- Acquiescence  
cur at the time, may debar himself from relief by hav- of *cestui que*  
ing acquiesced (*o*) in the breach of trust subse- trust.  
quently (*p*).<sup>1</sup>

2. How far the mere knowledge of a right to sue in Whether  
respect of a breach of trust, and the abstaining to sue mere knowl-  
will, without any other act, constitute *laches* in the eye edge and  
of a Court of equity, and disentitle the plaintiff to re- abstinence  
lief, as in the particular instances of purchases by trus- from suing a  
tees, &c., above referred to (*q*), was until lately very bar in cases  
uncertain; but it seems to be now settled that gross of breach of  
*laches*, as for twenty years, will disentitle a *cestui que* trust.]  
*trust* to relief (*r*). But of course mere knowledge with-  
out suing for a few years, as for three years (*s*), [four  
years (*t*),] or ten years (*u*), will not destroy the right  
to impeach the transaction. And where there is an ex-  
press trust for \*successive incumbrancers, on [ \* 923 ]

[*(n)* 45 & 46 Vict. c. 75.]

[*(o)* As to the meaning of acquiescence, see pp. 873, 874, *supra*.]

[*(p)* *Harden v. Parsons*, 1 Eden, 145; *Thompson v. Finch*, 22 Beav. 324, *per M. R.*; *Griffiths v. Porter*, 25 Beav. 241, *per M. R.*; *Walker v. Symonds*, 3 Sw. 64, *per Lord Eldon*; *Hope v. Liddell*, 21 Beav. 183; *Brice v. Stokes*, 11 Ves. 326; *Macdonnell v. Harding*, 7 Sim. 190; *Broadhurst v. Balguy*, 1 Y. & C. C. C. 16; *Lincoln v. Wright*, 4 Beav. 432; *Blackwood v. Borrowes*, 2 Conn. & Laws. 459; *Farrant v. Blanchford*, 1 De G. J. & S. 107; *Rutherford v. Maziere*, 13 Ir. Ch. Rep. 204; *Stevens v. Robertson*, 37 L. J. N. S. Ch. 499; *Sleeman v. Wilson*, 13 L. R. Eq. 36; *Philips v. Pennefather*, 8 I. R. Eq. 474.

[*(q)* See p. 873, *supra*.

[*(r)* *Bright v. Legerton* (No. 1), 29 Beav. 60; 2 De G. F. & J. 606; *Hodgson v. Bibby*, 32 Beav. 221; and see *Browne v. Cross*, 14 Beav. 105; *Payne v. Evens*, 18 L. R. Eq. 356; *Re M'Kenna*, 13 Ir. Ch. Rep. 239; *Marquis of Clanricarde v. Henning*, 30 Beav. 175. But see *Knight v. Bowyer*, 2 De G. & J. 443; [*Thomson v. Eastwood*, 2 App. Cas. 215.]

[*(s)* *Hanchett v. Briscoe*, 22 Beav. 496.

[*(t)* *Re Jackson*, 44 L. T. N. S. 467.]

[*(u)* *Farrant v. Blanchford*, 11 W. R. 178; [*Re Cross*, 20 Ch. D. 109.]

<sup>1</sup> *Mellish's Estate*, 1 Pars. Eq. 486; *Prevost v. Gratz*, 6 Wheat. 487. The Court will not infer acquiescence if the *cestui que trust* has had no actual knowledge of the breach; *Beeson v. Beeson*, 9 Barr, 300.

a limited interest, as a life estate, the subsequent incumbrancers are not chargeable with *laches* so long as the whole beneficial interest is absorbed by the prior incumbrancers (*v*).

No bar where notice of breach of trust is constructive only.

3. A *cestui que trust*, who does not actually know, is not to be affected with knowledge of a breach of trust because he *might by enquiry have ascertained the fact*, for it is not *his* duty but that of the trustee to see that the trust fund is in a proper state (*w*).<sup>1</sup>

Ward of Court.

4. A settlement by a ward of Court under the direction of the Court, of funds stated to represent the *infant's fortune*, will not operate as a confirmation of past breaches of trust (*x*).

Fluctuating body as parishioners or creditors.

5. It seems that a public and fluctuating body, as *parishioners*, may be bound by acquiescence (*y*). But it is almost unnecessary to repeat, that acquiescence cannot be objected against a class of persons, as parishioners or creditors, *with the same degree of force* as against a single individual (*z*).

Satisfaction in part for a breach of trust.

6. A *cestui que trust* who, knowing that his trustee has committed a breach of trust, gets what he can from the wreck of the property, and with that view receives from the trustee *part* of the relief to which he is entitled, does not thereby *waive his right to the full relief* to which he is entitled (*a*).

[Creditor's right not affected by not pressing for payment.]

[7. A creditor who merely abstains from calling upon the executors to realize the testator's estate for the purpose of paying his debt is not thereby deprived of his right to sue the executors for *devastavit*. To deprive him of his right, he must, either by his conduct or by express authority, have misled the executors into parting with the assets available for payment of his claim (*b*).]

Acquiescence by reversioner.

8. As to acquiescence by a *cestui que trust* while his interest is *reversionary*, L. J. Turner observed: "Length of time, where it does not operate as a statu-

(*v*) Knight v. Bowyer, 2 De G. & J. 421, see 443.

(*w*) Thompson v. Finch, 22 Beav. 325-327; 6 De G. M. & G. 560; Life Association of Scotland v. Siddal, 3 De G. F. & J. 73.

(*x*) Zambaco v. Cassavetti, 11 L. R. Eq. 439.

(*y*) See Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 92; Re Chertsey Market, 6 Price, 280, 284; Edenborough v. Archbishop of Canterbury, 2 Russ. 105, 108; Attorney-General v. Scott, 1 Ves. 415; Attorney-General v. Cuming, 2 Y. & C. C. 150.

(*z*) See *supra*, pp. 498, 870.

(*a*) Thompson v. Finch, 22 Beav. 316; 8 De G. M. & G. 560; [Re Cross, 20 Ch. D. 109, 122.]

[(*b*) Re Birch, 27 Ch. D. 622.]

<sup>1</sup> Prevost v. Gratz, 6 Wheat. 487; Beeson v. Beeson, 9 Bar. 300.

tory or positive bar, operates simply as evidence of assent or acquiescence. The two propositions of a bar by length of time and by acquiescence are not distinct propositions. They constitute but one proposition, and that proposition is that *the cestui que trust assented to the breach of trust*. A *cestui que trust* \* whose [\* 924] interest is reversionary is not bound to assert his title until it comes into possession; but the mere circumstance that he is not bound to assert his title does not seem to me to bear upon the question of his assent to a breach of trust. He is not, so far as I can see, less capable of giving such assent when his interest is in reversion than when it is in possession. Whether he has done so or not is a question to be determined on the facts of each particular case" (c). But he afterwards added that he was not prepared to say that, where the trust was definite and clear, a breach of trust could be held to have been sanctioned or concerned in by the mere knowledge and non-interference of the *cestui que trust* before his interest had come into possession (d). The above doctrines were approved by L. C. Campbell, with the further remark that it was easy to conceive cases in which, from great lapse of time, the facts from which the consent of the *cestuis que trust* was to be inferred might and ought to be presumed (e).

### III. Of Release and Confirmation.

1. Lastly, a *cestui que trust* may preclude himself from his remedy against the trustee by executing a formal release of the breach of trust or giving validity to the transaction by an express confirmation (f)<sup>1</sup>. And if the *cestui que trust* release the principal in a breach of trust or fraud, he cannot afterwards proceed against the other parties who would have been secondarily liable (g).

Release and confirmation by *cestui que trust*.

[But a release in respect of a transaction which a Court of equity would hold to be not merely voidable but void, will not bind the *cestui que trust* executing the release. Thus where on the footing of a supposed

[Release in respect of a void transaction invalid.]

(c) *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 72.

(d) *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 74.

(e) *Ib.* 77; and see *Taylor v. Cartwright*, 14 L. R. Eq. 176.

(f) *Blackwood v. Borrowes*, 2 Conn. & Laws. 459; *French v. Hobson*, 9 Ves. 103; *Wilkinson v. Parry*, 4 Russ. 272; *Aylwin v. Bray*, cited in *Small v. Attwood*, 2 Y. & J. 517; *Cresswell v. Dewell*, 4 Giff. 465, *per Cur.*

(g) *Thompson v. Harrison*, 2 B. C. C. 164; see *Blackwood v. Borrowes*, 2 Conn. & Laws. 478.

<sup>1</sup> *Henderson's Est.* 15 Phila. 598.

illegitimacy the title of the *cestui que trust* to a legacy was disputed and denied by the trustee, and the *cestui que trust* was thereby induced to accept from the trustee a smaller sum than that to which he was entitled, and by deed to release the trustee from the payment of the legacy, it was held, that the question of the legitimacy of the *cestui que trust* being entirely irrelevant, the transaction was absolutely unmeaning and void, and the release was set aside and relief granted after a long lapse of time (*h*).]

Waiver.

[\*925] \*2. Under the head of release, we may notice the subject of *waiver*. "As to *waiver*," said Sir W. Grant, "it is difficult to say precisely what is meant by that term. With reference to the legal effect, a *waiver* is nothing unless it amounts to a release. It is by a release, or something equivalent only, that an equitable demand can be given away. A mere *waiver* signifies nothing more than an expression of intention not to insist upon the right, which in *equity* will not without consideration bar the right any more than at *law* an accord without satisfaction would be a plea. If there be a consideration, however slight, I do not know that the Court would not consider it a sufficient foundation for a release, or what is equivalent to a release" (*i*).

It would seem, therefore, that waiver is some positive act which, if supported by valuable consideration, though slight, will be taken in equity to constitute a release; but, if it be merely an expression of intention not to insist on the right, and there is an absence of consideration, it is no waiver in the sense of a release (*k*).

Requisites  
for valid  
acquiescence,  
release, or  
confirmation.

Acquiescence, and release and confirmation, to have the effect we have mentioned, must be understood to be accompanied with the following conditions:—

*a*. As in the case of concurrence, the *cestui que trust* must be *sui juris*, and not a *feme covert* or infant; and, as regards infants, the Court continues its protection even after they have attained twenty-one till such time as they have acquired all proper information (*l*); and

[(*h*) *Thomson v. Eastwood*, 2 App. Cas. 215.]

(*i*) *Stackhouse v. Barnston*, 10 Ves. 466.

(*k*) See *Farrant v. Blanchford*, 11 W. R. 178.

(*l*) See *Walker v. Symonds*, 3 Sw. 69; *Hicks v. Hicks*, 3 Atk. 274; *Osmond v. Fitzroy*, 3 P. W. 131; *Hylton v. Hylton*, 2 Ves. 547; *Kilbee v. Sneyd*, 2 Moll. 233; *March v. Russell*, 3 M. & Cr. 42, 44; *Bateman v. Davis*, 3 Mad. 98; *Wedderburn v. Wedderburn*, 2 Keen, 722, 4 M. & Cr. 41; *Kay v. Smith*, 21 Beav. 522; *Aveline v. Melhuish*, 2 De G. J. & S. 288; *Chambers v. Crabbe*, 34 Beav. 457; *Sercombe v. Sanders*, 34 Beav. 382; *Kempson v. Ashbee*, 10 L. R. Ch. App. 15.

infants on coming of age must, in the case of a formal release being executed by them, *where it is required, have proper legal advice (m)*<sup>1</sup>. However, a *feme covert* is clearly *sui juris* as regards property settled to her *separate use*, [or belonging to her as her separate property under the Married Women's Property Acts,] where there is *no restraint against anticipation (n)*. But where a *feme covert* is entitled to separate estate *with a clause against \* anticipation* it is difficult to [\* 926] see how she can be affected by acquiescence. In a late case (o), however, Lord Justice Turner intimated his leaning to be in favour of the affirmative; but the language of Lord Justice Knight Bruce, in the case alluded to, was more guarded. The restraint on anticipation can impose no fetter as respects *income accrued due before the acts of acquiescence* relied upon (p). If a suit be instituted for relief against a breach of trust, the Court has jurisdiction to *sanction a compromise* on behalf of a married woman even though her interest be *reversionary (q)*.

β. The *cestui que trust* must be fully cognizant of all the facts and circumstances of the case (r)<sup>2</sup>.

---

(m) Lloyd v. Attwood, 3 De G. & J. 615.

(n) See *ante*, 759; and Jones v. Higgins, 2 L. R. Eq. 538; Taylor v. Cartwright, 14 L. R. Eq. 175. The dictum of Lord Hardwicke in Smith v. French, 2 Atk. 245, and the view of Sir J. Romilly, M. R., in Davies v. Hodgson, 25 Beav. 187, are opposed to the current of authority.

(o) Derbyshire v. Home, 3 De G. M. & G. 80; and see Wilton v. Hill, 25 L. J. N. S. Ch. 156; Davies v. Hodgson, 25 Beav. 186, 187; Clive v. Carew, 1 J. & H. 205; [Heath v. Wickham, 3 L. R. Ir. 376, 390, where the dictum of L. J. Turner was doubted.]

(p) Rowley v. Unwin, 2 K. & J. 138.

(q) Wall v. Rogers, 9 L. R. Eq. 58.

(r) Adams v. Clifton, 1 Russ. 297; Walker v. Symonds, 3 Sw. 1; Randall v. Errington, 10 Ves. 423; Buckridge v. Glasse, Cr. & Ph. 126; Bennett v. Colley, 2 M. & K. 232, *per* Lord Brougham; Vyvyan v. Vyvyan, 30 Beav. 65; Eaves v. Hickson, 30 Beav. 142; Farrant v. Blanchford, 11 W. R. 178, 1 De G. J. & S. 119; Life Association of Scotland v. Siddal, 3 De G. F. & J. 74; Strange v. Fooks, 4 Giff. 408; and see Earl of Chesterfield v. Jansen, 2 Ves. 146, 149, 152, 158; Roche v. O'Brien, 1 B. & B. 339, and the cases there cited; Bowes v. East London Water Works Company, 3 Mad. 375; M'Carthy v. Decaix, 2 R. & M. 615; Wedderburn v. Wedderburn, 2 Keen, 722; 4 M. & Cr. 41; Munch v. Cockerell, 9 Sim. 339; 5 M. & Cr. 179; Broadhurst v. Balguy, 1 Y. & C. C. C. 16; Downes v. Bullock, 25 Beav. 62; Lloyd v. Attwood, 3 De G. & J. 650.

---

<sup>1</sup> Lukens' App. 7 W. & S. 48; Stanley's App. 8 Barr. 431; Kirby v. Taylor, 6 Johns. Ch. 242; Brewer v. Vanarsdale, 6 Dana, 204.

<sup>2</sup> Shortel's App. 64 Pa. St. 25; Perset v. Quiggle, 57 Pa. St. 247; Briers v. Hackney, 6 Ga. 419.

γ. The *cestui que trust* must not only be acquainted with the *facts*, but also to a certain extent apprised of the *law*, or how those facts would be dealt with if brought before a Court of equity (*s*).

δ. The release must not be wrung from the *cestui que trust* by distress or terror (*t*).

[ \* 927 ]

## \* SECTION IV.

OF THE MODE AND EXTENT OF REDRESS IN BREACHES OF TRUST  
COMMITTED BY TRUSTEES OF CHARITIES.I. Of the *mode* of redress.

Ordinary  
mode of re-  
dress in  
breach of  
trust by  
charitable  
trustees.

1. The regular and ordinary course of proceeding is by way of *information*<sup>1</sup> in the name of the Attorney-General: the Queen is *parens patriæ*, and it is the duty of the Crown officer, the Attorney-General, to see that justice is administered to every part of her Majesty's subjects. *Relators* need not be personally interested (*u*). They are required merely because the Attorney-General, prosecuting a suit in the name of the Crown, would not be liable to costs, and unless some person were made responsible, proceedings might be instituted very oppressive to individuals (*v*).

Statute of  
Charitable  
Uses.

2. In the reign of Elizabeth an Act was passed, commonly called the *Statute of Charitable Uses* (*w*), by

(*s*) Cockerell v. Cholmeley, 1 R. & M. 425, *per* Sir J. Leach; M'Carthy v. Decaix, 2 R. & M. 615; Marker v. Marker, 9 Hare, 16; Burrows v. Walls, 5 De G. M. & G. 254; *Re* Saxon Life Assurance Society, 2 J. & H. 412; Strange v. Fooks, 4 Giff. 408; Kempson v. Ashbee, 10 L. R. Ch. App. 15; but see Stafford v. Stafford, 1 De G. & J. 202, and the observations at p. 497, *supra*.

(*t*) Bowles v. Stewart, 1 Sch. & Lef. 209, see 226; and see Earl of Chesterfield v. Janssen, 2 Ves. 149, 158.

(*u*) Attorney-General v. Vivian, 1 Russ. 226.

(*v*) Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 48, *per* Lord Redesdale.

(*w*) 43 Eliz. c. 4.

<sup>1</sup> Where the management of no charity *revenue* is concerned, as in a suit instituted by the parishioners for the mere purpose of setting aside the nomination of a clerk to the bishop by the trustees of the advowson, the Attorney-General need not be a party; it is the simple case of *cestuis que trust* calling upon the trustees to exercise the legal right; and [under the old practice] the suit was not by information, but by bill: see Attorney-General v. Parker, 1 Ves. 43; S. C. 3 Atk. 576; Attorney-General v. Forster, 10 Ves. 335; Attorney-General v. Newcombe, 14 Ves. 1; Davis v. Jenkins, 3 V. & B. 151; Inhabitants of Clapham v. Hewer, 2 Vern. 387; Attorney-General v. Cumīng, 2 Y. & C. C. C. 149.

which the Court of Chancery was empowered to issue commissions to certain persons, including the bishop of the diocese, who were authorized, after summoning a jury of the county where the property was situate, to enquire into any abuse or misapplication of the trust estate. Many of these proceedings were so little consonant with justice, and on appeal to the Lord Chancellor, were found at once so puzzling, and so far from accomplishing the object in view, that at length the practice of issuing commissions fell into disuse, and people again resorted to the original process by way of information (x).

3. After commissions had ceased to be issued, the legislature endeavoured to provide a remedy, not as before, by creating a new \*jurisdiction, but by [ \*928] giving liberty to proceed under the old jurisdiction of Chancery in a summary mode. The 52 Geo. 3, c. 101, commonly called *Sir Samuel Romilly's Act*, and intitled "An Act to provide a summary Remedy in Cases of Abuses of Trusts created for Charitable Purposes," declared that "in every case of a breach of any trust created for charitable purposes, or whenever the direction or order of a Court of equity should be deemed necessary for the administration of any trust for charitable purposes, it should be lawful for any two or more persons to present a *petition* to the Chancellor, Master of the Rolls, or the Court of Exchequer, praying such relief as the nature of the case might require, such petition to be heard in a summary way upon affidavits or such other evidence as should be produced, the order made thereon to be final and conclusive, unless appealed against to the House of Lords within two years from the entry thereof." And it was provided that "every petition should be signed by the persons preferring the same in the presence of and be attested by the *solicitor or attorney* concerned for the petitioners, and should be allowed by his Majesty's *Attorney or Solicitor General*."

52 Geo. 3. c. 101, called Romilly's Act.

4. These enactments, though penned by a very able hand, have been strongly reprobated as very loosely and obscurely worded—as tending rather to increase than diminish the expense of the application—in short, as having produced more mischief than benefit. "It was a wise saying," observed Lord Redesdale, "that the farthest way about was often the nearest way home, and he believed that these summary proceedings would be

Strictures on the Act.

(x) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 61, 62, per Lord Redesdale.

† 7 LAW OF TRUSTS.

not always the *nearest* or at least not the *best* way home (*y*).

Construction  
of the Act.

5. Upon the construction of this statute the following points have been resolved :—

Interest.

*a.* Although the Act authorizes *any* two or more persons to present the petition, the words must be understood to mean any persons *having an interest* (*z*); and the Court is bound to see not only that the petitioners are possessed of a clear interest, but that they prove themselves to be possessed of the interest they allege in their petition (*a*).

Breach of  
trust.

*β.* It has been said that the body of the statute is to be governed by the preamble, and therefore that the Act will not authorize a petition for any other purpose [\* 929] than relief against a breach of \*trust (*b*). But this narrow construction gives no force to the words of the Act, "*or whenever the direction or order of a Court of equity shall be deemed necessary for the administration of any trust for charitable purposes;*" and the doctrine has since been called into question, and may be considered as overruled (*c*).

Plain and  
simple cases  
only within  
the Act.

*γ.* The provision extends only to *plain and simple* cases for the opinion or direction of the Court (*d*), not where a question is to be discussed adversely who are to be intrusted with the administration of the charity estate (*e*), or who are entitled to the benefit of it (*f*), or whether the trustees or governors of the charity have or not, by the constitution of it, a certain authority, as of removing a master (*g*), or where any stranger is in-

(*y*) Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 49.

(*z*) Re Bedford Charity, 2 Sw. 518, per Lord Eldon.

(*a*) Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 91, per Lord Eldon.

(*b*) Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 66, 67, 81, per Lord Redesdale; and see Re Clarke's Charity, 8 Sim. 42.

(*c*) Re Upton Warren, 1 M. & K. 410; Re Parke's Charity, 12 Sim. 332; Re Manchester New College, 16 Beav. 610; Re Hall's Charity, 14 Beav. 115; and see Re Slewringe's Charity, 3 Mer. 707; Ex parte Rees, 3 V. & B. 12; Re Clarke's Charity, 8 Sim. 34; Re Phillipott's Charity, 8 Sim. 381; and cases in note to Re Hall's Charity, 14 Beav. 120.

(*d*) Corporation of Ludlow v. Greenhouse, 1 Mad. 92; reversed in D. P. 1 Bligh, N. S. 17, see 66, 81, 89; Re Phillipott's Charity, 8 Sim. 381; Ex parte Brown, G. Coop. 295; Ex parte Skinner, 2 Mer. 456, 457, per Lord Eldon; and see Re Chertsey Market, 6 Price, 277.

(*e*) Re West Retford Church and Poor-lands, 10 Sim. 101; Re Phillipott's Charity, 8 Sim. 381.

(*f*) Corporation of Ludlow v. Greenhouse, 1 Bligh, N. S. 66; Re Manchester New College, 16 Beav. 610; Re Clarke's Charity, 8 Sim. 34.

(*g*) Attorney-General v. Corporation of Bristol, 14 Sim. 648;



terested (*h*) (for the right of a third person cannot be disposed of on petition (*i*)), or where the relief which is sought is directed against the *assets* of a deceased trustee (*k*), or where the object of the application is not to have the existing charity regulated, but to have the funds diverted to some other charitable purpose (*l*). The Court has jurisdiction, however, under the Act, to settle a scheme of the charity (*m*), or to alter a scheme previously settled by decree (*n*), or to appoint new trustees (*o*), or where parishes have been divided to apportion the \* charities amongst the dis- [ \* 930 ] tricts (*p*), or to direct a sale of the charity estate in a proper case (*q*), and generally the Court, as between the trustees, and *cestuis que trust* of the charity, exercises a discretion as to whether it can put in operation the powers given by the Act with benefit to the charity (*r*).

δ. The allowance "by the Attorney or Solicitor- General" must be construed with reference to the previous law upon the subject, and must therefore be taken to mean, not by the Attorney or Solicitor-General indifferently, but by the Attorney-General, when there

and see *Re Manchester New College*, 16 Beav. 610; *Attorney-General v. East Retford Grammar School*, 17 L. J. N. S. Ch. 450; but see *Re Fremington School*, 10 Jur. 512; 11 Jur. 421; *Re Phillip's Charity*, 9 Jur. 957.

(*h*) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 66, *per* Lord Redesdale; *Ex parte Rees*, 3 V. & B. 10; *Re Manchester New College*, 16 Beav. 610; but see *Re Upton Warren*, 1 M. & K. 410; [*Re Hospital for Incurables*, 13 L. R. Ir. 361, where the Court adjudicated on the conflicting claims of two charities arising under the same instrument.]

(*i*) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 93, *per* Lord Eldon.

(*k*) *Ex parte Skinner*, Wils. 15, *per* Lord Eldon; *Re Saint Wenn's Charity*, 2 S. & S. 66.

(*l*) *Re Reading Dispensary*, 10 Sim. 118.

(*m*) *Re Royston Free Grammar School*, 2 Beav. 228; *Re Berkhamstead Free School*, 2 V. & B. 134; *Re Shrewsbury Grammar School*, 1 Mac. & G. 324; 1 Hall & Tw. 401.

(*n*) *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

(*o*) *Bignold v. Springfield*, 7 Cl. & Fin. 71.

(*p*) *Re West Ham Charities*, 2 De G. & Sm. 218.

(*q*) *Re Parke's Charity*, 12 Sim. 329; *Re Ashton Charity*, 22 Beav. 288; *Re Overseers of Ecclesall*, 16 Beav. 297; and see *Re Lyford's Charity*, *Ib.* note; *Re Alderman Newton's Charity*, 12 Jur. 1011 (the case of an exchange); *Re Sowerby's Charity*, Jan. 26, 1849, before the V. C. of England (the case of a willing purchaser); *Suir Island Female Charity School*, 3 Jon. & Lat. 171. As to the jurisdiction of the Court generally to sell charity lands, see *supra*, p. 539.

(*r*) *Re Manchester New College*, 16 Beav. 610.

is such an officer, and in the vacancy of that office by the Solicitor-General (s).

Want of signature.

e. If the petition be not signed by the Attorney-General or Solicitor-General, or if, after signature, it be not duly served, an order made by the Court under the Act will be an absolute nullity (t), and the petition may be taken off the file for irregularity (u).

Caution in signature.

c. As the intention of the legislature was to guard the charity fund from abuse, and with that view to prevent proceedings from being instituted, as they frequently were before, for no other reason than because it was known that the costs would be paid out of the charity estate, the Attorney-General, or, in the vacancy of that office, the Solicitor-General, ought not to sanction the petition with his signature but upon as much deliberation as if the relief were sought by way of information (v).

Attorney General must be a party.

f. The Attorney-General by his *allocatur*, or allowance, of the petition, is not *functus officio*, and precluded from all future control, but must be made a party to any subsequent proceedings under the petition, as he would have been to all proceedings by way of information (w).

May correct his judgment.

g. The Attorney-General, as representing the person [ \* 931 ] of the \* Queen in her character of *parens patriæ*, is bound to see justice done, not only to the plaintiff in the petition, but also to the trustees and other defendants, and therefore is not estopped by his *allocatur* of the petition from afterwards correcting his judgment, but may support or oppose the views of the petitioners, as in his discretion he may think fit (x).

Motion.

h. When the *jurisdiction* of the Court has been once attracted by the petition, a subsequent order may be made upon motion without the expense of a further petition (y).

Acts appointing Commissioners of enquiry.

6. Under powers given by 58 Geo. 3, c. 91, and 59 Geo. 3, c. 81, certain *commissioners of enquiry into*

(s) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 51, 52, 82, *per* Lord Redesdale; *Ex parte Skinner*, 2 Mer. 456, *per* Lord Eldon.

(t) *Attorney-General v. Green*, 1 J. & W. 305.

(u) *Re Dovenby Hospital*, 1 M. & Cr. 279.

(v) *Ex parte Skinner*, 2 Mer. 456, *per* Lord Eldon.

(w) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 51, 65, 82, 83, *per* Lord Redesdale; *Attorney-General v. Stamford*, 1 Ph. 737; and see *Re Chertsey Market*, 6 Price, 271; *Attorney-General v. Haberdashers' Company*, 15 Beav. 397.

(x) *Corporation of Ludlow v. Greenhouse*, 1 Bligh, N. S. 43—52.

(y) *Re Slewringe's Charity*, 3 Mer. 707; *Ex parte Friendly Society*, 10 Ves. 287; *Re Chipping Sodbury School*, 5 Sim. 410.

*charities* were appointed, and by 59 Geo. 3, c. 91, it was enacted, that when it appeared to such commissioners of enquiry that the directions or orders of a Court of equity were requisite for remedying any *neglect, breach of trust, fraud, abuse, or misconduct* in the management of any trust created for charitable purposes, &c., it should be lawful for the said commissioners to certify the particulars of such case to his Majesty's Attorney-General. The labours of these commissioners of enquiry proved very valuable, and many informations were filed in consequence of certificates made by them; but their powers, after being frequently continued, expired in 1837.

7. By the *Charitable Trusts Act*, 1853, great additional facilities have been afforded for detecting and remedying breaches of trust in charity matters. 16 & 17 Vict. c. 137.

Commissioners are thereby appointed (z), to whom are confided powers of enquiry (a) similar to those given to the commissioners appointed by the Acts of George 3, and also a similar power of certifying cases to the Attorney-General as fit for his interference (b). Powers of enquiry.

In cases of charities the incomes of which exceed 30*l.* per annum, the same jurisdiction is given in charity cases (after the *previous sanction of the Charity Commissioners*) to the Chancery Judges at chambers as was before the Act exercisable by the Court of Chancery, or the Lord Chancellor entrusted with the custody of lunatics, in a suit regularly constituted, or upon petition; but the Judge may direct a suit or petition to be instituted or presented (c). And the provisions of the Act in respect of charities whose incomes exceed 30*l.* per annum, are applicable to charities within the city of London, the income whereof is less than 30*l.* per annum (d). New jurisdiction at chambers.

\* Where the incomes of charities do not exceed 30*l.* (since extended to 50*l.* (e) ) per annum, the *District Courts of Bankruptcy* and *County Courts*, with the *previous sanction of the Charity Commissioners*, are armed with the same jurisdiction as the Court of Chancery had (f); and with the permission of the Commissioners to be applied for within one month after the New jurisdiction of Courts of Bankruptcy and County Courts.

(z) 16 & 17 Vict. c. 137, s. 1.

(a) *Ib.* sects. 9 to 14.

(b) *Ib.* s. 20.

(c) *Ib.* s. 28.

(d) *Ib.* s. 30.

(e) 23 & 24 Vict. c. 136, s. 11.

(f) 16 & 17 Vict. c. 137, s. 32.

making of the order (*g*), an *appeal* was allowed to the to the Court of Chancery (*h*).

Necessity for  
previous con-  
sent of  
Charity Com-  
missioners  
before taking  
proceedings.

The Act contains a special provision that no suit or proceeding (*i*) not being an application "*in any suit or matter actually pending*," shall be commenced or taken without an authority previously obtained from the Charity Commissioners (*k*). It was at first held that where money had been paid into Court under the Trustee Relief Act, 10 & 11 Vict. c. 96 (*l*), or under a Railway Act (*m*), no such suit or matter was pending as to obviate the necessity of previously obtaining the concurrence of the Charity Commissioners. But it has since been decided *by the Court of Appeal*, that in such cases the previous sanction of the Charity Commissioners is unnecessary. The object of the provision was merely to stop the enormous abuses in reference to proceedings in charity matters, and the words *suit or matter actually pending* mean pending at the time of the *application*, [\* 933] and not at the passing of the Act (*n*). \* It

(*g*) Ib. s. 39.

(*h*) Ib. s. 40.

[(*i*) The words suit or other proceeding do not include an action at law. Thus, the sanction of the Charity Commissioners was held not to be requisite, where the Governors of an Endowed School commenced an action against the master to restrain him from presenting himself at the school, or continuing to occupy the schoolhouse, on the ground that he had never been properly appointed to the mastership, was unfit to fulfil its duties, and had been removed by a resolution of the Governors, *Holme v. Guy*, 5 Gh. D. 901. But they include a mandamus to compel the rendering of proper accounts; *Attorney-General v. Dean and Canons of Manchester*, 18 Ch. D. 596. As to what cases fall within the section, see *Brittain v. Overton*, 25 Ch. D. 41, n.; *Bentham v. Earl of Kilmorey*, 25 Ch. D. 39.]

[(*k*) But this provision does not apply to the Charities exempted from the Act by sect. 62; or to Places of Religious Worship falling under sect. 9, of 18 & 19 Vict. c. 81, *Glen v. Gregg*, 21 Ch. D. 513; and see *Attorney-General v. Sidney Sussex College*, 15 W. R. 162, 21 Ch. D. 514, note. The authority of the Commissioners must be given formally in the manner directed by the Act, and a letter signed by the secretary of the board stating that "they were prepared to issue their certificate authorizing the proceedings;" that "any difficulty in the application to the Court would probably be obviated by the production of the letter," and that "the certificate would be prepared and issued in due course," was held by Fry, J., in a pressing case of an application for an injunction to be insufficient; *Thomas v. Harford*, 48 L. T. N. S. 262.]

(*l*) *Re Markwell's Legacy*, 17 Beav. 618; *In re Skeetes*, 1 Jur. N. S. 1037.

(*m*) *Re London, Brighton and South Coast Railway Company*, 18 Beav. 608.

(*n*) *Re Lister's Hospital*, 6 De G. M. & G. 184; *Re St. Giles and St. George, Bloomsbury*, 25 Beav. 313; *Braund v. Earl of*

has, however, been held *since the decision of the Court of Appeal*, that a petition for the appointment of new trustees under a scheme previously settled by the Court requires the sanction of the Commissioners (o).

The act contains other provisions (p) of a *preventative* rather than a *remedial* kind.

By the 16th section, for instance, the Board has Board power to entertain applications for their *opinion or ad-* authorized to *vice*, and persons acting in accordance therewith are give advice. indemnified.

By the 48th section, *lands* belonging to any charity Provisions may be vested in the secretary of the Board as a corpo- for vesting ration sole by the name of the *Treasurer* of Public land, stock, Charities; and by the 51st section, annuities, stocks, &c. shares, or securities held for any charity may be vested in the *Official Trustees* of charitable funds; and by the 54th and following sections, the Board have power when the ordinary jurisdiction is insufficient for the purpose to approve provisionally of *new schemes* of charities, *varying from the original endowment*, but which are to be submitted annually to Parliament for its ratification.

8. By the *Amendment Act*, 18 & 19 Vict. c. 124, by Charitable the 15th section, the name of the Treasurer of Public Trusts Charities is abolished, and the secretary of the Board Amendment for the time being is styled the *Official Trustee* of charity Act. *lands*; and by the 17th and 18th sections, the Act provides for the appointment of the *Official Trustees* of charitable *funds*, to consist of the secretary of the Board for the time being, and such other persons as the Lord Chancellor may appoint, who are to have perpetual succession.

9. By "*The Charitable Trusts Act*, 1860" (23 & 24 Charitable Vict. c. 136), the Charity Commissioners are enabled Trusts Act, by s. 2 to make such orders as may be made "by any 1860. Judge of the Court of Chancery sitting at *Chambers* (q), or by any *County Court* or *District Court of Bankruptcy* (r), for the appointment or removal of any schoolmaster or schoolmistress or other officer thereof,

Devon, 3 L. R. Ch. App. 800; [*Re William of Kyngeston Charity*, 30 W. R. 78.]

(o) *Re Jarvis's Charity*, 1 Dr. & Sm. 97; and see *Re Bingley School*, 2 Drew. 283; *Re Ford's Charity*, 3 Drew. 324; both, however, decided previously to the appeal decisions in p. 932 note (i).

(p) See pp. 540, 547, *supra*, for powers of sale, leasing, &c. given by the Acts.

(q) See 16 & 17 Vict. c. 137, s. 28.

(r) *Ib.* s. 32.

or for or relating to the assurance, transfer, or payment of any real or personal estate" belonging to the charity, or for the establishment of any scheme. But, by sect. 4, no such order is to be made where the charity income exceeds 50*l.*, except on the application of the majority of the trustees; and no trustee is to be re- [\* 934] moved on the ground only \* of religious belief; and by sect. 5, the Commissioners are not to make orders in any case, which by reason of its contentious character or otherwise may be considered by them more fit to be heard by the judicial Courts (s).

## II. Of the *extent* of redress.

What account will be directed of *mesne* rents and profits. The account not affected by Statutes of Limitation.

Under this head we propose to enquire only within what period of time the account of *mesne rents* and *profits* directed against *trustees* of charities guilty of a breach of trust will be restricted.

1. It is clear that in informations against *trustees* of charities the old *Statutes of Limitation* opposed no bar to the account, because charities were held exempt from the purview of the Statutes, and the claim was by *cestui que trust* against an *express trustee* (t); and although it was at one time considered that the Statute might afford a good rule how far back to carry the account (u), this doctrine was afterwards overruled (v). And now, 3 & 4 W. 4, c. 27, though applicable to charities (w), does not limit the liability of express trustees to account (x); so that charity trustees must as express trustees account upon the same footing as before the Act.

Bar to the account from inconvenience of relief.

2. But the Court may set a limit to the account on the ground of *inconvenience*. "It is the constant practice of Courts of equity," said Sir Thomas Plumer, "to discourage stale demands: and this principle has often been acted upon in cases of charities. When there has been a long period, during which a party has, under an innocent mistake, misapplied a trust fund from the *laches* and neglect of others, that is, from no one of the

(s) As to the effect of the 5th section, see *Re Hackney Charities*, 34 L. J. N. S. Ch. 169; *Re Burnham National Schools*, 17 L. R. Eq. 241.

(t) *Attorney-General v. Mayor of Exeter*, Jac. 448, per Sir T. Plumer; *Attorney-General v. Brewers' Company*, 1 Mer. 498, per Sir W. Grant; see *Incorporated Society v. Richards*, 1 Conn. & Laws. 58; 1 Dru. & War. 258.

(u) *Anon. Case*, 2 Eq. Ca. Ab. 12, pl. 20; *Love v. Eade*, Rep. t. Finch. 269.

(v) See cases in note (b).

(w) See p. 884, *ante*.

(x) *Hicks v. Sallitt*, 3 De G. M. & G. 816.

public setting him right, and when the accounts have, in consequence, become entangled, the Court, under its general discretion, considering the enormous expense of the enquiries, and the great hardship of calling upon representatives to refund what families, acting on the notion of its being their property, have spent, has been in the habit, while giving relief, or fixing a period to the account" (y).

3. The period to which the account has been carried back has \*varied according to the circum- [\* 935] stances presented to the consideration of the Court. Where no inconvenience can be objected, the Court will as a general rule carry back the account to the time of commencement of the misapplication.

4. Thus in *Attorney-General v. The Mayor of Exeter* (z), where the defendants admitted possession of the charity estate for the last 200 years, and stated that they had *always been ready and willing to account for the rents*, Sir W. Grant ordered the defendants to account for the whole period, and this decision was affirmed by Sir T. Plumer on a rehearing, and by Lord Eldon on appeal.

5. In *Attorney-General v. The Corporation of Stafford* (a), the trustees in their answer, filed in 1811, had furnished accounts of the trust estate from the year 1791, and Lord Gifford saw no inconvenience in decreeing the account as far back as the trustees themselves had stated it, but refused to extend it farther.

6. In *Attorney-General v. The Brewers' Company* (b), Sir W. Grant directed the trustees to account from the date of a certain Act of Parliament, a period of about *thirty* years. In a more recent suit against a corporation the account was carried back to the last appointment of new trustees of the corporation, a period short of *ten* years. And in another contemporaneous suit against the same corporation, but where the legal estate was not in trustees, but in the corporation itself, the Court by analogy, and for want of another fixed point, ordered the account to commence at the date of the last appointment of new trustees in the first suit (c).

7. In other cases the account has been carried back to the period when the corporation was first informed of the misapplication (as by the publication of the

Period to which account is carried back varies according to circumstances. *Attorney-General v. Mayor of Exeter.*

*Attorney-General v. Corporation of Stafford.*

*Attorney-General v. The Brewers' Company, &c.*

Various other periods adopted.

(y) *Attorney-General v. Mayor of Exeter*, Jac. 448.

(z) Jac. 443; 2 Russ. 362.

(a) 1 Russ. 547.

(b) 1 Mer. 495.

(c) *Attorney-General v. Mayor of Newbury*, 3 M. & K. 647.

Charity Commissioners' Report); in other cases it has been directed from the time of filing the information, and in others from the date of the decree (*d*).

Compromise  
with  
Attorney  
General.

8. Occasionally, where the defendant has been in strictness accountable for a very long period, but the right, if enforced, would impose great hardship, it has been referred to the Attorney-General, as representing the charity, to certify whether under the circumstances it might not be proper for the charity to accept a less sum (*e*).

Trustees  
acting from  
mistake.

[ \* 936 ] \* 9. Where the trustees have diverted the charity funds from their proper channel through *mis- take*, it is now settled, that the Court will not call back any disbursements made before the commencement of the proceedings (*f*), or before the trustees had notice that the propriety of such application would be called into question (*g*). The Court holds a strict hand over trustees where there is any wilful misemployment; but where the Court sees nothing but mistake, while it gives directions for the better management in future, it refuses to visit with punishment what has been transacted in time past. To carry back the account to the very commencement of the misapplication would be the ruin of half the corporations in the kingdom (*h*); besides, to act on such a principle would be a great discouragement to undertake the office of trustees of charities (*i*).

Distinctions  
between cor-  
porations and  
individuals.

10. If an individual make an annual payment for a particular purpose out of the profits of his estate, it is a reasonable presumption, from the strong interest which he has to resist an unfounded demand, that he

(*d*) See Attorney-General v. Drapers' Company, 6 Beav. 390.

(*e*) Attorney-General v. Mayor of Exeter, 2 Russ. 370; and see Attorney-General v. Corporation of Carlisle, 4 Sim. 279; Attorney-General v. Brettingham, 3 Beav. 91; Attorney-General v. Pretyman, 4 Beav. 462.

(*f*) Attorney-General v. Corporation of Exeter, 2 Russ. 45; affirmed, 3 Russ. 395; Attorney-General v. Dean of Christchurch, Jac. 474, 637; S. C. 2 Russ. 321; Attorney-General v. Rigby, 3 P. W. 145; Attorney-General v. Caius College, 2 Keen, 150; Attorney-General v. Drapers' Company, 4 Beav. 67; Attorney-General v. Christ's Hospital, Ib. 73; and see Attorney-General v. Mayor of Newbury, 3 M. & K. 650.

(*g*) Attorney-General v. Burgesses of East Retford, 2 M. & K. 35, see 37; and see Attorney-General v. Corporation of Berwick-upon-Tweed, Taml. 239; Attorney-General v. Caius College, 2 Keen, 150.

(*h*) Attorney-General v. Burgesses of East Retford, 2 M. & K. 37, *per* Sir J. Leach.

(*i*) Attorney-General v. Corporation of Exeter, 2 Russ. 54, *per* Lord Eldon.



has enquired into the origin of the claim, and he is therefore fixed with implied notice of all the circumstances that attend it; but the same presumption cannot be applied to corporations, because, having no immediate personal interest in the application of the profits of the corporate property, they may, without the imputation of culpable negligence, adopt and follow the practice of their predecessors (*k*).

11. Where the charity fund has been administered by a *parish* and misapplied, there, as a parish is a fluctuating body, and the present ratepayers ought not to pay for past defaults, no retrospective account can be ordered (*l*). Breach of trust by a parish.

12. In the East Retford case (*m*), before Sir J. Leach, the Court, on proof of a breach of trust by the corporation, directed an enquiry by the Master of what property the corporation was possessed not \* de. [ \* 937] voted to special purposes; with the view that compensation might be made to the charity by an immediate sale; but the case upon that point was subsequently appealed against and reversed, as contrary to principle (*n*), and the plaintiff must now confine himself to a sequestration against the corporation in the ordinary course. Mode of attaching the corporation property.

(*k*) Attorney-General v. Burgesses of East Retford, 2 M. & K. 38, per Sir J. Leach.

(*l*) *Ex parte Fowlser*, 1 J. & W. 70; and see cases cited Ib. 73, note (*a*).

(*m*) 2 M. & M. 35.

(*n*) 3 M. & Cr. 484; and see Attorney-General v. Newark-upon-Trent, 1 Hare, 395.

MAXIMS OF EQUITY FOR SUSTAINING THE TRUE CHARACTER OF THE TRUST ESTATE AGAINST THE LACHES OR TORT OF THE TRUSTEE.

BESIDES the several rights and remedies which have just been the subject of discussion, the Court, with the view of *keeping the trust estate in its regular channel, and sustaining its proper character, whether of realty or personalty, against the laches or other misbehaviour of the trustee*, has found it necessary to establish two maxims, which we now proceed to examine: viz., *First*, What ought to be done should be considered as done (o); and, *Secondly*, The act of the trustee shall not alter the nature of the *cestui que trust's* estate (p).

SECTION I

WHAT OUGHT TO BE DONE SHALL BE CONSIDERED AS DONE.

General principle.

1. "THE forbearance of the trustees," said Sir J. Jekyll, "in not doing what it was their office to have done, shall in no sort prejudice the *cestui's que trust*, since at that rate it would be in the power of trustees, either by doing or delaying to do their duty, to [ \*939 ] \* affect the right of other persons; which can never be maintained. Wherefore the rule in such cases

(o) *Walker v. Denne*, 2 Ves. jun. 183, *per* Lord Loughborough; *Foone v. Blount*, Cowp. 467, *per* Lord Mansfield; *Holland v. Hughes*, 16 Ves. 114, *per* Sir W. Grant; *Gaskell v. Harman*, 11 Ves. 507, *per* Lord Eldon; *Stead v. Newdigate*, 2 Mer. 530, *per* Sir W. Grant; *Pulteney v. Darlington*, 1 B. C. C. 237, *per* Lord Thurlow; *Burgess v. Wheate*, 1 Eden, 186, *per* Sir T. Clarke; *Lechmere v. Earl of Carlisle*, 3 P. W. 215, *per* Sir J. Jekyll; *Fitzgerald v. Jervoise*, 5 Mad. 29, *per* Sir J. Leach; *Earl of Buckingham v. Drury*, 2 Eden, 65, *per* Lord Hardwicke; *Guidot v. Guidot*, 3 Atk. 256, *per* Lord Hardwicke; *Crabtree v. Bramble*, Ib. 687, *per eundem*; *Trafford v. Boehm*, Ib. 446, *per eundem*; *Astley v. Earl of Essex*, 6 L. R. Ch. App. 898; &c.

(p) *Phillips v. Brydges*, 3 Ves. 127, *per* Lord Alvanley; *Earlom v. Saunders*, Amb. 242, *per* Lord Hardwicke; *Selby v. Alston*, 3 Ves. 351, *per* Sir R. P. Arden.

is, that '*What ought to have been done shall be taken as done,*' and a rule so powerful it is as to alter the very nature of things, to make money land, and, on the contrary, to turn land into money" (q). And Lord Maclesfield, in the case of a bequest to a trustee for purchasing lands, observed, "If the purchase had been made it must have gone to the heir, but if the trustee, by delaying the purchase, might alter the right, and give it to the executors, this would be to *make' it the will of the trustee, and not the will of the testator, which would be very unreasonable and inconvenient*" (r).

2. Upon these grounds it is in equity a universal rule, that money directed to be laid out in the purchase of land, or land directed to be sold and turned into money, shall be considered as that species of property into which it is directed to be converted; and this, in whatever manner the direction is given, whether by will, by way of contract, by marriage articles, by settlement, or otherwise, and whether the money has been actually deposited in the hands of trustees for the purpose, or is only covenanted to be paid, and whether the land has been actually conveyed, or is only agreed to be conveyed (s).<sup>1</sup>

Money to be laid out on land to be regarded as land.

3. Thus, if money be stipulated to be laid out in land to be settled on a *feme covert* in fee or in tail, the husband of the *feme* is entitled to his *curtesy*, though no purchase be actually made in the lifetime of the wife; and he will be decreed the interest of the money until a purchase can be found; and when the investment has been made, he will have a life estate in the lands (t).

Subject to curtesy.

4. Whether under similar circumstances a widow could, before the late Dower Act, have established her title to *dower*, was much questioned. It was admitted she was not dowable of a *mere trust estate* (u); but, where money was to be converted into land, and the interest was only prevented from being legal through

Whether subject to dower.

(q) *Lechmere v. Earl of Carlisle*, 3 P. W. 215.

(r) *Scudamore v. Scudamore*, Pr. Ch. 543.

(s) *Fletcher v. Ashburner*, 1 B. C. C. 499; and see *Wheldale v. Partridge*, 5 Ves. 396.

(t) *Sweetapple v. Bindon*, 2 Vern. 536; *Cunningham v. Moody*, 1 Ves. 174; *Dodson v. Hay*, 3 B. C. C. 405.

(u) Altered by the late Act, 3 & 4 W. 4, c. 105.

<sup>1</sup> *Champ's Heirs*, 15 B. Mon. 118; *Scudder v. Vanarsdale*, 2 Beasley, 109; *Smith v. M'Crary*, 3 Ired. Eq. 204; *Ex parte M'Bee*, 63 N. Carolina, 332; *Peter v. Beverley*, 10 Pet. 532; *Holland v. Craft*, 3 Gray. 180; *Kane v. Gott*, 24 Wend. 64; *Parkinson's App.* 8 Casey, 455; *Brolaskey v. Galley's Exrs*, 1 P. F. Sm. 509; *McClure's App.* 22 P. F. Sm. 417.

the forbearance of the trustee, it was contended that the rights of parties ought not to be varied by the neglect of the person who was merely the instrument for carrying out the settlor's wishes.

Lord Hardwicke's opinion.

The opinion of Lord Hardwicke was on more than [\* 940] one occasion \* expressed adversely to the wife's claim (*v*); but there are several authorities in favour of the right to dower (*w*).

Late Dower Act.

By the late Act (except where the marriage was celebrated on or before the 1st day of January, 1834), the Legislature has given dower out of every species of trust estate in possession; subject to be defeated, however, by any declaration of intention on the part of the husband (*x*).

[Letters of administration.]

[5. Money which has arisen from settled land sold under the Settled Estates Acts and liable to be reinvested in land under those Acts is not a proper subject for letters of administration, so as to give jurisdiction to the Court to grant such letters (*y*).]

Money to be laid out in land is not subject to escheat.

6. If money be articulated, or directed, to be laid out in land to be settled on a person in fee, and the *cestui que trust* dies without heirs, there can, as a general rule, be no claim for an escheat by any one, since until the land is actually purchased it is uncertain who will fill the character of lord (*z*). Cases might no doubt occur free from this element of uncertainty, as where the trust is to lay out money in the purchase of lands in the parish of A., all the lands in which are held under the same lord; but even in such a case the lord would fail to establish his claim, for a lord by escheat comes under no head of equity—is entirely a stranger to the trust, claiming by title paramount of his own (*a*). The pretence for his claim would be, that the operation of the rule so absolutely converts the equitable into a legal estate, that all the incidents, that

(*v*) See *Cunningham v. Moody*, 1 Ves. 176; *Crabtree v. Bramble*, 3 Atk. 687.

(*w*) *Fletcher v. Robinson*, cited *Dudley v. Dudley*, P. R. Ch. 250; S. C. stated from R. L. in *Banks v. Sutton*, 2 P. W. 709; *Otway v. Hudson*, 2 Vern. 583; *Banks v. Sutton*, 2 P. W. 700; *Re Lord Lismore*, 1 Hog. 177; and see the arguments of Sir J. Jekyll in *Banks v. Sutton*, 2 P. W. pp. 704, 706.

(*x*) See p. 737, *supra*.

[(*y*) *Re Goods of Lloyd*, 9 P. D. 65.]

(*z*) This point escaped notice in *Walker v. Denne*, 2 Ves. jun. 170, and it seems to have been assumed that the *Crown* would be the lord.

(*a*) *Walker v. Denne*, 2 Ves. jun. 185, *per* Lord Loughborough; *Henchman v. Attorney-General*, 3 M. & K. 494, *per* Lord Brougham.

would have belonged to the legal, must be considered in equity as attaching to the equitable estate; but the rule was meant not to benefit third persons, but to protect the interests of *parties to the trust*.

7. As money to be laid out in land is regarded as land, it could not even before the late Wills Act, have been devised by an infant, though of sufficient age to bequeath personal estate (*b*); and, for the same reason, it will pass by the *cestui que trust's* will under the \* general description of all the testator's [\* 941] lands (*c*), or of all his lands in the county of \_\_\_\_\_ or elsewhere (*d*), though in the latter case it was very plausibly contended, that the testator could not have referred to money, but must have alluded to something that possessed a local character. [But where the money is subject to a general power of appointment by will, and *there is no intermediate interest* in any person who after the death of the donee of the power would have a right to call for its investment in land, and the donee has shown an intention in his lifetime to make the money personal estate so far as he can, it will pass under a general bequest by the donee of all his personal estate (*e*).]

8. So money to be converted into land was bound by a judgment (*f*), and was never accounted *personal assets*, and therefore was not until the late Act (*g*), liable to the payment of simple contract debts (*h*).

9. So a gift by a parent (a freeman of the city of Orphanage London) to a child, of money to be laid out in land was considered a purchase by the father and a donation of share.

(*b*) Carr v. Ellison, 2 B. C. C. 56; Earlom v. Saunders, Amb. 241. By the late Act, 7 W. 4, & 1 Vict. c. 26, an infant cannot make a will even of personal estate.

(*c*) Guidot v. Guidot, 3 Atk. 256, per Lord Hardwicke; Rashleigh v. Master, 1 Ves. jun. 201; S. C. 3 B. C. C. 99; Green v. Stephens, 17 Ves. 77; Biddulph v. Biddulph, 12 Ves. 161; [Chandler v. Pocock, 15 Ch. D. 491; Re Greaves' Settlement Trusts, 23 Ch. D. 313.]

(*d*) Lingen v. Sowray, 1 P. W. 172; Guidot v. Guidot, 3 Atk. 254.

[(*e*) Chandler v. Pocock, 15 Ch. D. 491; 16 Ch. D. 648; and see Re Greaves' Settlement Trusts, 23 Ch. D. 313.]

(*f*) Frederick v. Aynscombe, 1 Atk. 392.

(*g*) 3 & 4 W. 4, c. 104.

(*h*) Whitwick v. Jermin, cited Baden v. Earl of Pembroke, 2 Vern. 58; Lawrence v. Beverly, cited Ib. 55; S. C. 2 Keb. 841; Fulham v. Jones, cited Pulteney v. Darlington, 7 B. P. C. 550; Foone v. Blount, Cowp. 467, per Lord Mansfield. Money to be laid out on a purchase of land is not land for the purposes of the Stamp Acts, but pays legacy duty; Re De Lancey, 4 L. R. Ex. 345; 5 L. R. Ex. 102.

the estate, and consequently, under the law existing before the late Act (*i*), the child was not bound, before receiving his orphanage share, to bring the purchase into hotchpot (*k*).

In what cases money to be laid out on land goes to the heir.

Cases of the heir claiming against a stranger.

10. With respect to the *heir* of the person upon whom the lands, when purchased, are directed or agreed to be settled, it is necessary, for ascertaining his rights, to distinguish between the cases where the real representative claims as against a *stranger*, and where he claims as against the *executor of his own ancestor*.

It appears to be perfectly established that the heir is entitled to the money as land, if he seek to enforce his equity against a *stranger*. Thus, 1. If a sum of money be *bequeathed* to be laid out in a purchase of lands to be settled to the use of A. and his heirs, and A. dies before a purchase has been obtained, the money is the [\*942] \* property, not of the executor, but of the heir of A. (*l*). 2. If on the marriage of A. money be *actually deposited* in the hands of trustees, either by A. himself or by a stranger, to be laid out in a purchase of lands to be settled to the use of A. for life, remainder to his wife for life, remainder to the issue in tail, remainder to A. in fee, and A. dies without issue, his heir, and not his executor is entitled (*m*). 3. If on the marriage of A. there be a *covenant* on the part of B. to lay out money in a purchase of lands to the above uses, and A. dies without issue, his heir takes the benefit of the covenant (*n*).

Case of the heir claiming against the executor of his own ancestor.

11. But if the heir have to enforce his claim, not against a stranger, but against the *personal representative of his own ancestor*, as if A. on his marriage covenant to lay out money in a purchase of lands to be

(*i*) 19 & 20 Vict. c. 94.

(*k*) *Hume v. Edwards*, 3 Atk. 450; *Annand v. Honeywood*, 1 Vern. 345.

(*l*) *Scudamore v. Scudamore*, Pr. Ch. 543. *Abbot v. Lee*, 2 Vern. 284, at first sight appears *contra*, but it seems from the Registrar's book that the direction for conversion was not imperative, but to be at the discretion of the testator's executors. Had the money been absolutely converted into *land*, the ultimate remainder would, by failure of issue of the surviving daughter, have resulted as personal estate of the *testator* (see p. 152, *ante*); but being *money* absolutely bequeathed, subject to a discretion to lay out on land which was not exercised, it belonged to the administrator of the legatee, as was decreed. The case is stated from Reg. Lib. in Appendix No. II. to 3rd edition of this Treatise.

(*m*) *Disher v. Disher*, 1 P. W. 204; *Chaplin v. Horner*, Ib. 483; *Edwards v. Countess of Warwick*, 2 P. W. 171; and see *Lechmere v. Lechmere*, Cas. t. Talb. 90.

(*n*) *Knights v. Atkyns*, 2 Vern. 20.

settled to the use of himself for life, remainder to his wife for life, remainder to the issue in tail, remainder to his own right heirs, in this instance the question whether the heir can call upon the executor for the money must depend upon this further distinction. —

a. If at the death of A. there be an equitable interest in the fund outstanding in another, as a life estate in the wife, [or a right in a jointress to have a rent-charge (o),] or an estate tail in the issue, then the real quality of the money is sustained and continued by that right, and the heir of A. is entitled to call upon A.'s executor to pay the money (p); and if there be such an outstanding claim at the death of the ancestor, the circumstance that the heir institutes his suit during the subsistence of that claim, or after its determination, seems to be immaterial (q).

The heir has a right, if any person has an equitable interest.

In *Walker v. Denne* (r) Lord Loughborough expressed some doubt upon this doctrine. "Between the heir and personal \* representative," he said, [\* 943] "their rights are pure legal rights, chance decides what shall be real, what personal; neither has a *scintilla* of equity to make the property that which it is not in fact." To this reasoning of Lord Loughborough it may be replied, that, when it is said there is no equity between the real and personal representatives, the meaning is no more than this—that what is real estate at the death of the ancestor will go to the heir, and what is personal estate at the death of the testator will go to the executor; but, for the purpose of determining what is real and what is personal estate, the Court is guided, not by the legal nature of the property at the death of the owner, but, as appears in numerous instances, by the stamp and character impressed upon it in consideration of a Court of equity. Thus if a *mortgagee in fee* die, the mortgage being regarded as a mere security for part of the mortgagee's personal estate, the executor may call upon the heir for a conveyance of the land (s). So, if

*Walker v. Denne.*

[(o) *Walrond v. Rosslyn*, 11 Ch. D. 640. *Seem*, it would be otherwise if the only right were that of portionists to have their portions raised, S. C.]

(p) *Kettleby v. Atwood*, 1 Vern. 298; re-heard, *Ib.* 471; *Lancy v. Fairechild*, 2 Vern. 101; *Chaplin v. Horner*, 1 P. W. 483; *Lechmere v. Earl of Carlisle*, 3 P. W. 211; affirmed *Cas. t. Talbot*, 89; *Oldham v. Hughes*, 2 Atk. 452.

(q) See *Chaplin v. Horner*, 1 P. W. 483; *Léchmere v. Lechmere*, *Cas. t. Talb.* 80.

(r) 2 Ves. Jun. 175, 176, 183; and see *Oxenden v. Lord Compton*, *Ib.* 70; *Lord Compton v. Oxenden*, *Ib.* 265.

[(s) Now by 44 & 45 Vict. c. 41, s. 30, where the death has occurred since the 31st December, 1881, the land devolves upon the executor.]

the *mortgagor* die, the heir of the mortgagor might until Locke King's Act have called on the executor to discharge the incumbrance out of the personal assets. So if a person contract for the sale of an estate, and die before the completion of the sale, the legal fee descends upon the heir (*t*), but the purchase-money passes to the executor; and on the other hand, if a person contract for the purchase of an estate, and die, the executor must pay the money, but the heir is entitled to the purchase (*u*)<sup>1</sup>. Thus, in the words of Lord Talbot, "Where the dispute is between the two representatives of the deceased, the one of his real, the other of his personal estate, the heir's being but a volunteer in regard to his ancestor will not exclude him from the aid of the Court, for though the question is between two volunteers, the Court will determine which way the right is, and will decree accordingly" (*v*). "I am disposed," said Lord Eldon, "to say, notwithstanding the opinion of Lord Rosslyn in *Walker v. Denne*, and some other modern authorities, that if the instrument be taken to impress a fund with real qualities immediately upon the execution, in the question between the heir and executor, the money being once clearly and plain- [\* 944] ly impressed with real \* uses as land, and one of those uses being for the benefit of the heir, it will remain for his benefit, and it is not correct to say the Court does not interpose between volunteers, if they give to the executor that money which the instrument has given to the heir" (*w*). And Sir W. Grant to the same effect observed, "There is no weight in the circumstance that the property is found in the shape of money or land, *for the character is to be found in the deed*. The opinion of Lord Rosslyn that property was to be taken as it happened to be at the death of the party from whom the representatives claimed, was much

[(*t*) Now by 44 & 45 Vict. c. 41, 4, where the death has occurred since the 31st December, 1881, if the contract is enforceable against the heir or devisee of the vendor, his personal representatives can convey the land for the purpose of giving effect to the contract; and see also sect. 30.]

[(*u*) But since the recent Act the estate in the hands of the heir will be subject to the repayment to the executor of the purchase-money paid by him; 40 & 41 Vict. c. 34; *Re Cockcroft*, 24 Ch. D. 94.]

(*v*) *Lechmere v. Lechmere*, Cas. t. Talb. 90.

(*w*) *Wheldale v. Partridge*, 8 Ves. 235.

<sup>1</sup> *Griffith v. Beecher*, 10 Barb. 432; *Rose v. Jessup*, 7 Harris (Pa.) 280; *Naglee v. Ingersoll*, 7 Barr. 185. The rights of creditors of the vendor are not affected by the conversion, *Leiper's Exrs. v. Irvine*, 2 Casey, 54; see *Leiper's App.* 11 Casey, 420.



doubted by Lord Eldon, who held, *in which I perfectly concur*, that it must be considered as being in the state in which it *ought to be*. Lord Rosslyn's rule was new, and not according to prior cases" (x).

β. But if A. die, leaving neither wife nor issue, so that, to use the technical expression, the money is "at home," that is A. at the time of his death is the absolute and exclusive owner, and there is no outstanding right in another person, in this case the real quality of the money has become merged and extinguished, and on the death of A. the heir has no equity to call upon the executor. To keep on foot the *notional* conversion of money into land, it is evident there must be a right in some one to insist upon the *actual* conversion; but if A. be in possession of 20,000*l.* upon trust to lay out in a purchase of lands to be settled to the use of himself and his heirs, the right and the thing both centering in the same person, there is nobody to sue, and it follows that the action is extinguished (y).

The decision in the much litigated case of *Chichester v. Bickerstaff* (z), amounted probably to no more than this. On the marriage of Sir J. Chichester with the daughter of Sir C. Bickerstaff, the latter agreed to pay 1500*l.* by way of portion, which, together with 1500*l.* more to be advanced by Sir John Chichester within three years after the marriage, was to be invested in lands to be settled on Sir John for life, remainder to his wife for life, remainder to the issue in tail, remainder to Sir John in fee. Sir John and his lady, within one year after the marriage, both died without issue, the husband having survived. Sir John by his will made *Sir C. Bickerstaff his executor*, and bequeathed the residue of his personal estate, after payment of his debts, &c., to Frances Chichester, his sister. The heir at law of Sir John brought his bill against Sir Charles to compel him to pay the 1500*l.* insisting that by virtue of \*the marriage articles the money ought to [ \* 945 ] be looked upon as land, and therefore belonged to him as heir. Lord Somers said, "This money, though once bound by the articles, yet when the wife died without issue became free again, and was under the power and disposal of Sir John, as the land would likewise have been in case a purchase had been made pursuant to the

Heir has no right where the money is "at home."

*Chichester v. Bickerstaff.*

(x) *Thornton v. Hawley*, 10 Ves. 138; *Kirkman v. Miles*, 13 Ves. 339.

(y) See *Pulteney v. Darlington*, 1 B. C. C. 237.

(z) 2 Vern. 295; S. C. cited *Pulteney v. Darlington*, 7 B. P. C. 554.

articles, and therefore would have been assets to a creditor, and must have gone to the executor or administrator of Sir John; and this is much stronger where there is a residuary legatee;" and his Lordship dismissed the bill. Then follows what is apparently the note of the reporter, viz., that "money shall in many cases be considered as land when bound by articles in order to a purchase, but whilst it remains still money, and no purchase made, the same shall be deemed as part of the personal estate of such person who might have aliened the land in case a purchase had been made."

Errors re-  
specting  
Chichester v.  
Bickerstaff.

In this case it has been commonly, but surely without reason, supposed, that the suit of the plaintiff was for the 1500*l.* which Sir Charles had articulated to pay, and in consequence of this misconception, the authority of the decision has repeatedly been called into question. Thus Sir J. Jekyll, overlooking the very material circumstance that Sir Charles had been appointed the executor of the testator, observes, "It is remarkable with respect to this case, that the wife died within three years after the marriage, during which period the purchase was to be made, so that the time was not come within which the money was to be laid out; and till then it continued money; and possibly the Court had some evidence to induce them to believe that Sir John Chichester looked on the money as personal estate; and *if this does not distinguish it from other cases, I doubt, in opposition to so many decrees, the resolution here given would hardly be maintainable*" (a). And Lord Talbot was apparently under the same misapprehension, for he observes, "Had the money in the case before me been *deposited in the hands of trustees*, it must have been looked upon as real estate, and the heir have been entitled. This seems to be granted, and no authority against it but what has been collected from the case of *Chichester v. Bickerstaff*. It is probable the Court went upon some reason, which induced it to think that Sir John looked upon that money as personal estate, for otherwise *the authority of that case is not to be maintained, being contrary to all former resolutions*" (b). But Lord Thurlow viewed the case in a different light, [\*946] and evidently \*considered the 1500*l.* sought by the bill of the plaintiff to be the 1500*l.* articulated to be paid by the testator himself, and so payable out of his assets in the hands of Sir Charles Bickerstaff, his ex-

(a) *Lechmere v. Earl of Carlisle*, 3 P. W. 221.

(b) *Lechmere v. Lechmere*, Cas. t. Talb. 90.

ecutor. "Where," said his Lordship, "a sum of money is *in the hands of one without any other use but for himself*, it will be money, and the heir cannot claim, like the case of *Chichester v. Bickerstaff*, against which I think there is no judgment, though there are a number of opinions. I know no better authority than that case" (c).

The Registrar's book has been searched, but no *de-cree* can be found. It appears, however, from a motion in the cause for dissolving an injunction, that the circumstances of the case were as follows:—Sir Charles Bickerstaff had brought an action at law against the plaintiff, and had obtained a judgment for a certain sum upon a balance of accounts. Upon this the plaintiff instituted a suit in equity for staying the proceedings at law, alleging that Sir Charles stood indebted to him *in the sum of 3000*l.** to which the plaintiff was entitled as heir at law of Sir John, under Sir John's marriage articles. It was ordered by the Court, that judgment should be entered up, but execution should be stayed till the cause should be heard the Easter term following. As Vernon, the reporter, speaks only of one sum of 1500*l.*, to which the executor was declared entitled, it is probable the other sum was adjudged to the heir, a decision that would in every respect be conformable to principle; for while the 1500*l.* covenanted to be paid by Sir John himself was, by the death of his wife without issue in his lifetime, "at home," and therefore set free from the articles, the other sum of 1500*l.* which was covenanted to be paid by Sir Charles, was outstanding in the hands of Sir Charles as trustee, and would therefore retain the character of real estate until some act by Sir John to remove that impression (d).

12. Of course the money will be "at home" where the person absolutely entitled to the fund receives it from the trustee the depositary of it, and that, whether the payment was made with the sanction of the Court, or by the voluntary act of the trustee himself (e).

13. Lord Macclesfield advanced the position, that if a person *voluntarily and without consideration* covenanted to lay out money \* in a purchase of [\* 947] land to be settled on himself and his heirs, the Court

Facts from the Registrar's book.

Actual receipt of the money makes it "at home."

Voluntary covenant to lay out money on land.

(c) *Pulteney v. Darlington*, 1 B. C. C. 238.

(d) To the principle under consideration must be referred the case of *Pulteney v. Darlington*, 1 B. C. C. 223; affirmed in D. P.; see *Wheldale v. Partridge*, 8 Ves. 235; and see 3rd ed. p. 803.

(e) See *Pulteney v. Darlington*, 1 B. C. C. 236; *Bowes v. Earl of Shaftesbury*, 5 B. P. C. 144; *Chaplin v. Horner*, 1 P. W. 483, as to the 1350*l.*

would compel the execution of such a contract, though merely voluntary; for in all cases where it was a measuring cast between an executor and an heir, the latter should in equity have the preference (*f*). But the proposition that the heir is more favoured than the executor, though often repeated (*g*), and arising perhaps from the leaning of the Court towards the heir *in respect of lands of which the ancestor was seised*, does not appear to be founded on any intelligible principle, and the opinion expressed by Lord Macclesfield may be questioned.

Conversion must be absolute or imperative, not optional.

14. In the preceding observations it is assumed that the direction or agreement for conversion is by the terms of the instrument made *absolute and imperative*; for where a mere *option* is given, the original character of the property continues until the discretion has been exercised, and the conversion actually effected; as, if the direction or agreement be to lay out money in "lands or securities" (*h*), in "freeholds or leaseholds" (*i*), or if by any other mode of expression an intention be manifested of not converting the property at all events (*k*)<sup>1</sup>. [But a direction to trustees to sell "so soon as they shall see necessary for the benefit of the *cestuis que trust*" (*l*), or "whenever it shall appear to their satisfaction that such sale will be for the benefit of the *cestuis que trust*" (*m*), amounts to an imperative direction to convert.]

Of conversion, apparently optional, but

15. Where the uses declared are *exclusively applicable to real estate*, the direction or agreement will be construed to be imperative, though the direction or agree-

(*f*) *Edwards v. Countess of Warwick*, 2 P. W. 176; and see *Lechmere v. Lechmere*, Cas. t. Talb. 90, 91.

(*g*) See *Crabtree v. Bramble*, 3 Atk. 689; *Scudamore v. Scudamore*, Pr. Ch. 544; *Haytor v. Rod*, 1 P. W. 364; *Wilson v. Beddard*, 12 Sim. 32.

(*h*) *Curling v. May*, cited *Guidot v. Guidot*, 3 Atk. 255; *Amler v. Amler*, 3 Ves. 583; [*Evans v. Ball*, 30 W. R. 899; 47 L. T. N. S. 165;] and see *Van v. Barnett*, 19 Ves. 102.

(*i*) *Walker v. Denne*, 2 Ves. jun. 170; *Davies v. Goodhew*, 6 Sim. 585.

(*k*) *Wheldale v. Partridge*, 5 Ves. 388; S. C., 8 Ves. 227; and see *Abbot v. Lee*, 2 Vern. 284; *Davies v. Goodhew*, 6 Sim. 585; *Polley v. Seymour*, 2 Y. & C. 708; *Clissold v. Cook*, 27 L. T. N. S. 143; 20 W. R. 796.

[(*l*) *Doughty v. Bull*, 2 P. Wms. 320.]

[(*m*) *Re Raw*, 26 Ch. D. 601; *Robinson v. Robinson*, 19 Beav. 494.]

<sup>1</sup> *Bleight v. The Bank*, 10 Barr. 131; *Pratt v. Taleaterro*, 3 Leigh. 419; *Cook v. Cook*, 5 Cr. Green, 375; *Anewalt's App.* 6 Wright. (Pa.) 412; *Miller's & Bowman's Appeal*, 10 P. F. Sm. 404.

ment be to lay out the money in "*freeholds, leaseholds*, where the or *copyholds*" (*n*), or the instrument contains an authority to invest the money upon securities until a purchase can be found (*o*), or the fund being already out upon security, a power is \* inserted to call [ \* 948] it in, and lay it out upon other securities (*p*), or even though the direction or agreement be to lay out the money on lands or securities, the intention in the last case apparently being, that the money shall be invested upon security until a suitable purchase can be found, and that the interest and dividends in the meantime shall be paid to the person who would be entitled to the rents (*q*).

16. And, where the uses are thus exclusively applicable to real estate, the direction or agreement will be regarded as imperative though the settlement require the purchase to be made at the *request* of a person (*r*), for the insertion of such a clause has been taken to mean, not that a conversion may not be effected *before* but that it shall certainly be effected *after* request (*s*). And the construction is the same, though the purchase be directed to be made with a person's *consent* and *approbation* (*t*); for upon a convenient purchase being proposed, the Court, said Sir J. Jekyll, will take upon itself to judge thereof, and, without some reasonable objection made, will order the money to be laid out in it, so that such a proviso seems to be immaterial, and as if omitted (*u*). But of course the instrument may be so strongly expressed as to show the intention of the parties, that the request or consent of a particular per-

Conversion at "the request" or "with the consent" of a party.

(*n*) Hereford *v.* Ravenhill, 5 Beav. 51; *Re Whitty's Trust* 9 I. R. Eq. 41.

(*o*) Edwards *v.* Countess of Warwick, 2 P. W. 171; Earlom *v.* Saunders, Amb. 241; and see Davies *v.* Goodhew, 6 Sim. 585.

(*p*) Thornton *v.* Hawley, 10 Ves. 129; and see Triquet *v.* Thornton, 13 Ves. 345.

(*q*) Earlom *v.* Saunders, Amb. 241; Cowley *v.* Hartstonge, 1 Dow, 361; Johnson *v.* Arnold, 1 Ves. 169; Cookson *v.* Reay, 5 Beav. 22; 12 Cl. & Fin. 121; but see Atwell *v.* Atwell, 13 L. R. Eq. 23; [and see Evans *v.* Ball, 30 W. R. 899; 47 L. T. N. S. 165.]

(*r*) Thornton *v.* Hawley, 10 Ves. 129; Johnson *v.* Arnold, 1 Ves. 169.

(*s*) 10 Ves. 137; but see Stead *v.* Newdigate, 2 Mer. 530.

(*t*) Thornton *v.* Hawley, 10 Ves. 129; [Batteste *v.* Maunsell, 10 I. R. Eq. 97, 314.] In Symons *v.* Rutter, 2 Vern. 227, Sir G. Hutchins was right, according to Sir J. Jekyll, Lechmere *v.* Earl of Carlisle, 3 P. W. 220, and Lord Thurlow, Pulteney *v.* Darlington, 1 B. C. C. 238; but see Stead *v.* Newdigate, 2 Mer 530.

(*u*) Lechmere *v.* Earl of Carlisle, 3 P. W. 220, *per* Sir J. Jekyll; and see Costello *v.* O'Rorke, 3 Ir. R. Eq. 172.

son should be a substantial ingredient, and that no conversion should take place unless it is given (v).

[In all these cases the real question is whether it appears from the whole tenor of the instrument that the intention was that the personalty should be converted into realty, and where such an intention appears a trust for conversion may be implied (w). But a mere gift of personalty with limitations appropriate to real estate, a great part of which limitations must necessarily fail as soon as the personalty vests in any one who, if it had been real estate, would have taken an estate tail, does not raise an implied trust for conversion into realty (x).]

Land to be converted into money is regarded as money.

[\* 949] \*17. As money to be converted into land is considered as land, so *land to be converted into money, is upon the same principle invested with all the properties of money (y)*. Thus, if an estate be directed or agreed to be sold, and the proceeds be made payable to A., the property, though unconverted at A.'s decease, will pass by a general bequest of all his *personal estate (z)*, and upon A.'s death, will vest in his *personal representative (a)*<sup>1</sup>, and will be liable to *probate (b)*, and *legacy duty (c)*. And the result will be the same though the conversion is by the terms of the instrument of trust not to take place until after A.'s death (d). [And a will made by a married woman in exercise of a power and appointing the property is entitled to probate, though the property was unconverted at her death (e)].

(v) *Davies v. Goodhew*, 6 Sim. 585; and see *Re Taylor's Trust*, 9 Hare, 596; *Sykes v. Sheard*, 33 Beav. 114,

[(w) *Evans v. Ball*, *ubi supra*.]

[(x) *Evans v. Ball*, *ubi supra*.]

(y) But a settlement of land so circumstanced is not a settlement of a definite sum of money within the meaning of the Stamp Act; *Re Stucley's Settlement*, 5 L. R. Ex. 85.

(z) *Stead v. Newdigate*, 2 Mer. 521.

(a) *Ashby v. Palmer*, 1 Mer. 296; *Biggs v. Andrews*, 5 Sim. 424; *Bayden v. Watson*, 7 Jur. 245; *Burton v. Hodsoll*, 2 Sim. 24; *Grieveson v. Kirsopp*, 2 Keen. 653; *Griffith v. Ricketts*, 7 Hare, 299; *Hardey v. Hawkshaw*, 12 Beav. 552; *Simpson v. Blackburn*, W. N. 1875, p. 157.

(b) *Attorney-General v. Brunning*, 4 H. & N. 94; reversed on appeal, 8 H. L. Cas. 243; *Attorney-General v. Lomas*, 9 L. R. Ex. 29; [*Attorney-General v. Hubbuck*, 10 Q. B. D. 488; 13 Q. B. D. 275; In the Goods of *Gunn*, 9 P. D. 242;] *Attorney-General v. Marquess of Ailesbury*, 14 Q. B. D. 895; and see *Matson v. Swift*, 8 Beav. 368; *Custance v. Bradshaw*, 4 Hare, 324.

(c) *Forbes v. Stevens*, 10 L. R. Eq. 178.

(d) *Clarke v. Franklin*, 4 K. & J. 257.

[(e) In the Goods of *Gunn*, 9 P. D. 242.]

<sup>1</sup> *Wurts v. Page*, 4 Cr. Green 365; but see *Girard Life Ins. Co.'s App.* 25 P. F. Sm. 87.

18. But it has been held as a rule of convenience that if a testator direct his real estate to be sold, and the proceeds laid out and invested in trust for A. for life with remainders over, the tenant for life is entitled to the *rents* only of the estate from the testator's decease (*f*); and so, if the sale be directed on the death of a particular person the tenant for life is entitled only to the *rents* from the death of that person (*g*). But a tenant for life without impeachment of waste of the estate to be *purchased*, though entitled to the rents and profits of the estate to be *sold*, may not, as part of such profits cut timber on the estate to be sold, for this would give him double waste (*h*).

As to rents before conversion.

19. The doctrine already explained with reference to the exclusion of the claim of the heir where the money is *at home* must, it is conceived, equally apply as against *next of kin* and *residuary legatees* in cases where the *land* may be said to be at home. Thus, \* if A., [\* 950] being entitled to land, *covenant* on the occasion of his marriage to convey it to trustees, who are to sell and stand possessed of the proceeds upon trusts for the benefit of A. and his wife and the children of the marriage, with an ultimate trust for A. absolutely, here, if in A.'s lifetime and before any conveyance, the wife dies without children, both the land and the benefit of the ultimate trust are united in A., and the *land* is *at home*, and upon A.'s death, no claim can, it is conceived, be sustained by those entitled to his personal estate. But of course the case would be different, if land had been actually *conveyed* to the trustees upon trust for sale, since this would be analogous to a deposit in the hands of trustees as above supposed of money to be laid out in land (*i*); and consequently there would be a complete conversion, of which those entitled to the personal estate of A. would reap the benefit.

Next to kin have no right where land is at home.

20. If the proceeds of sale of real estate be given to an *alien*, the doctrine of conversion applies in his favour. He was always capable of taking for his own benefit, and the Crown was excluded (*k*)<sup>1</sup>.

Alien may take proceeds of sale.

(*f*) *Casamajor v. Storde* cited *Walker v. Shore*, 19 Ves. 390; *Hutchin v. Mannington*, 1 Ves. jun. 367, *per Cur.*

(*g*) *Fitzgerald v. Jervoise*, 5 Mad. 25, the marginal note of which does not exactly accord with the report itself.

(*h*) *Plymouth v. Archer*, 1 B. C. C. 159; and see *Burges v. Lamb*, 16 Ves. 180.

(*i*) See p. 942, *supra*.

(*k*) *Du Houmeflin v. Sheldon*, 1 Beav. 79; 4 M. & Cr. 525;

<sup>1</sup> *Craig v. Leslie*, 3 Wheat. 563.

Proceeds  
forfeitable  
for felony if  
land in fact  
sold, but not  
otherwise.

21. [Prior to the recent Act abolishing forfeitures for felony it was held that] if a share of proceeds was given to a *felon*, and the time of sale had arrived, and the sale had been actually made before the felon had worked out his punishment, the Crown was entitled (*l*). But if the felon had worked out his punishment before the time of sale had arrived, there, as the Crown had no equity to compel the conversion, the discharged felon and not the Crown was entitled (*m*). Money paid into Court as representing land taken under the provisions of an Act of Parliament and liable to be laid out again in the purchase of land retained, as against the Crown, its character of real estate, and was therefore not forfeitable on conviction for felony (*n*).

Proceeds  
cannot be  
bequeathed  
to a charity.

22. It was at one time held that if real estate was stamped with a trust for conversion, and a portion of the proceeds of sale was given to A., and A. died having by his will given his *personal estate* to charity, his interest in the proceeds of sale was to be regarded as pure personal estate, and the bequest was good (*o*); but [\* 951] \* this doctrine has been since overruled (*p*). And where a testator gave to A. a legacy 3000*l.*, payable out of the testator's personal estate, and the proceeds from the sale of his real estate, and A. bequeathed the 3000*l.* to a charity, it was ruled that the whole bequest was void, and that the charity was not entitled to claim so much of the 3000*l.* as on an apportionment of the original testator's real and personal estate would be found payable out of the pure personalty (*q*); [but in a subsequent case, where a testator gave a share of his residuary personal estate to charity, and the residuary estate consisted of pure personalty, and of a legacy from another testator payable out of the proceeds of the real and personal estate an apportionment was directed, and the bequest was held to fail only so far as it arose from the portion of the legacy attributable to the

---

Sharp *v.* St. Sauveur, 17 W. R. 1002; 20 L. T. N. S. 799, but overruled on another ground, 7 L. R. Ch. App. 343. See now as to aliens, 33 Vict. c. 14, and *supra*, p. 27.

(*l*) *Re Thompson's Trusts*, 22 Beav. 506.

(*m*) *Ibid.* See now as to felons, 33 & 34 Vict. c. 23; and *supra* p. 28.

(*n*) *Re Harrop's Estate*, 3 Drew. 726.

(*o*) *Marsh v. Attorney-General*, 2 J. & H. 61; *Attorney-General v. Harley*, 5 Mad. 321; *Shadbolt v. Thornton*, 17 Sim. 49.

(*p*) *Brook v. Badley*, 4 L. R. Eq. 106; *S. C.* 3 L. R. Ch. App. 672; *Lucas v. Jones*, 4 L. R. Eq. 73.

(*q*) *Brook v. Badley*, 3 L. R. Ch. App. 672.



realty, or to the personalty savouring of realty, of the testator who bequeathed the legacy (*r*).]

23. A share of the proceeds to arise from a sale under a trust for conversion is not an interest in land within *Locke King's Act*, and therefore a legatee of such share, subject to a mortgage of it made by the testator, can call for a discharge of the mortgage out of the general personal estate (*s*).

24. If real and personal estate be given to trustees upon trust for a class, with a *discretionary* and not an *imperative* power to convert the whole into personal estate, and if the trustees make a total or partial conversion, the objects of the trust will take the property as real or personal estate, according to the actual condition in which it is found (*t*). [But if the power be discretionary, and an order be made in an administration action directing a sale absolutely, the property is converted as from the date of the order (*u*).]

The conversion must be imperative.

A mere declaration in a will that the residuary real estate shall for the purpose of transmission be impressed with the quality of personal estate from the time of the testator's death does not \* amount to a [\* 952] conversion of the real estate into personalty, but the property will notwithstanding the direction devolve as realty (*v*).]

25. So if a *mortgage* deed contain a power of sale with a direction that the surplus proceeds shall be paid to the mortgagor, his heirs, executors, administrators, and assigns, and the property is sold by the mortgagee, the surplus will be personal or real estate of the mortgagor, according as the sale takes place before or after his death (*w*). But where an option to purchase has been given to a lessee, and the option is exercised after the lessor's death, such exercise has been held to effect

Case of a sale by mortgagee.

Case of option of purchasing.

[(*r*) *Re Hill's Trusts*, 16 Ch. D. 173.

(*s*) *Lewis v. Lewis*, 13 L. R. Eq. 218.

(*t*) *Walter v. Maunde*, 19 Ves. 424; *Atwell v. Atwell*, 13 L. R. Eq. 23; *Shipperdson v. Tower*, 1 Y. & C. C. C. 441; *Re Beaumont's Trusts*, 32 Beav. 191; *Polley v. Seymour*, 2 Y. & C. 708; *Edwards v. Tuck*, 23 Beav. 268; *Re Whitty's Trust*, 9 L. R. Eq. 41; and see *Yates v. Yates*, 28 Beav. 637; *Cowley v. Hartstonge*, 1 Dow. 378; *Bourne v. Bourne*, 2 Hare, 35; *Lucas v. Brandreth* (No. 1), 28 Beav. 273; *Beecroft v. Wilkin*, W. N. 1867, p. 117; *Re Ibbitson's Estate*, 7 L. R. Eq. 226; *Miller v. Miller*, 13 L. R. Eq. 263. Otherwise, where the power is imperative, *Grievson v. Kirsopp*, 2 Keen, 653.

[(*u*) *Hyett v. Mekin*, 25 Ch. D. 735.]

(*v*) *Hyett v. Mekin*, 25 Ch. D. 735.]

(*w*) *Wright v. Rose*, 2 Sim. & St. 323; and see *Clarke v. Franklin*, 4 K. & J. 260; *Bourne v. Bourne*, 2 Hare, 35; *Re Cooper's Trust*, 4 De G. M. & G. 768.

a retrospective conversion (*x*). The difference is, that in the case of a mortgage the mortgagor or his heir can redeem at any time, and therefore the real character of the property continues until the time of actual sale, when the proceeds become the personal estate of the person then entitled to the equity of redemption; but in the option given to a lessee, the lessor has parted with all control over the property and placed it in the power of another to change the nature of it, and if the power be exercised the conversion operates retrospectively and it becomes personal estate as between all who claim under the lessor. [But where the lessee dies without having exercised the option, the beneficial interest in the lease with the benefit of the option goes as part of his personal estate, and no subsequent exercise of the option will work a retrospective conversion as between the persons entitled to his realty and personalty respectively (*y*).]

Where the mortgagee is a trustee for sale.

26. If, instead of executing a mortgage, the debtor convey the estate to the creditor upon *trust* to sell and pay himself and hand over the balance to the debtor, his executors and administrators, and a declaration is inserted in the deed that it is not to be considered as in the nature of a mortgage, but as a conveyance to become absolute, in equity as well as at law, immediately after default in payment, here, though the sale [\* 953] is not made in the debtor's lifetime, \* yet the property is converted into personalty, and belongs, subject to the charge, to the debtor's personal representative (*z*).

Neither heir nor next of kin can claim under the will of an ancestor by virtue of the doctrine of conversion.

27. In the above discussion of the doctrine of conversion, it may be taken to be generally immaterial whether the instrument which directs the money to be laid out in land or the land to be converted into money, is a deed, or writing, or will. But it may be useful to point out in reference to claims by an *heir at law* or by *next of kin*, that where the instrument effecting the

(*x*) *Lawes v. Bennett*, 1 Cox, 167; *Collingwood v. Row*, 4 Jur. N. S. 785; *Weeding v. Weeding*, 1 J. & H. 424; *Whitmore v. Douglas*, cited *Ripley v. Waterworth*, 7 Ves. 436; *Townley v. Bedwell*, 14 Ves. 590; [*Re Adams and the Kensington Vestry*, 27 Ch. D. 394;] but see *Drant v. Vause*, 1 Y. & C. C. C. 580; *Emuss v. Smith*, 2 De G. & Sm. 722. [This retrospective conversion is, however, implied only as between the real and personal representatives of the person giving the option, and does not apply as between the vendor and the purchaser; *Edwards v. West*, 7 Ch. D. 858.]

(*y*) *Re Adams and the Kensington Vestry*, 24 Ch. D. 199; 27 Ch. D. 394.]

(*z*) *Re Underwood*, 3 K. & J. 745.

conversion is a *will*, neither the *testator's* heir at law as *such*, nor his next of kin as *claiming under the intestacy*, can establish any right by virtue of the doctrine of conversion (a). The conversion directed is a conversion *for the purposes of the will only*, and so far as the trusts declared by the will respecting the property directed to be converted may fail, the property devolves, according to its original character of realty or personality, in conformity with the principles established by the decisions respecting resulting trusts (b)<sup>1</sup>.

28. But of course either the heir at law or next of kin may claim as *persona designata*. Thus, where a testator bequeathed a sum of money to be laid out on lands to be settled to certain uses, with the ultimate remainder to his *own right heirs*, and the prior limitations failed, the heir, on a bill filed against the executor of his ancestor, was held entitled to the money (c); but here the title of the heir was not as *heir*, but as *purchaser* under the will.

But heir or kin may claim as *persona designata*.

In connection with the subject of conversion, it is to be observed that where land is to be converted into money, or money is to be converted into land, the notional conversion will subsist only until some *cestui que trust*, who is competent to *elect*, intimates his intention to take the property in its original character (d). The Court will not compel a conversion against the will of the absolute owner; for should the conversion be made, he would immediately reconvert it, and equity will do nothing in vain (e).

Upon this subject we shall consider :—I. What persons are capable of electing; and, II. How the act of election may be manifested.

(a) This point seems to have escaped Lord Loughborough's notice in *Walker v. Denne*, 2 Ves. jun. 170, though the cases upon resulting trusts were cited; see *Ib.* p. 173.

(b) See pp. 149 *et seq. ante*.

(c) *Robinson v. Knight*, 2 Eden, 155.

(d) *Harcourt v. Seymour*, 2 Sim. N. S. 45; *Cookson v. Reay*, 5 Beav. 22; 12 Cl. & Fin. 121; *Dixon v. Gayfer*, 17 Beav. 433.

(e) *Seeley v. Jago*, 1 P. W. 389.

<sup>1</sup> See *Smith v. McCrory*, 3 Ired. Eq. 204; *Commonwealth v. Martin*, 5 Munf. 117; *Morrow v. Brenizer*, 2 Rawle, 185; *Slocum v. Slocum*, 4 Edw. Ch. 613. *Nagle's App.* 1 Harris, (Pa.), 260; It has been held that the blending of the proceeds of the realty with the personalty so as to form a common fund, for all the purposes of the will, although some of them fail, renders the conversion absolute. *Burr v. Sim*, 1 Wharton, 252; *Morrow v. Brenizer*, 2 Rawle, 185.

Who may elect.

Infants, lunatic.

Power of *feme covert* over money-land.

How *feme covert* might elect to take money-land under the old law.

[\* 954] \* I. Who may elect.

1. In respect of *personal incapacity*, an infant (*f*), or lunatic (*g*), has no power to make election.

2. As regards a *feme covert*, although she has no power to elect by act *in pais* (*h*) like a person who is *sui juris*, yet she may, by exercise of the powers of disposition given her by law over money to be laid out in land, or land directed to be turned into money, alter the nature of the property, and so effect an election.

3. "Although," said Lord Hardwicke, "a *feme covert* cannot alter the nature of money to be laid out in land by contract or deed, yet if the money be invested in land (and sometimes sham purchases have been made for the purpose (*i*),) she may then levy a fine on the land, and give it to her husband, or any body else. There is a way, also, of doing this without laying the money out in land, and that is, by coming into a Court of equity, and consenting to take the money as personal estate; for upon her being present in Court, and being examined (as a *feme covert* upon a fine is), her consent binds the money articulated to be laid out in land as much as a fine at law would the land, and she may dispose of it to the husband or any body else. And the reason of it is, that at law, money so articulated to be laid out in land is considered barely as money until an actual investment, and the equity of this Court alone views it in the light of real estate; and, therefore, this Court can act upon its own creature, and do what a fine at common law can upon land" (*k*). And, at a later date, Lord Hardwicke's views were ratified by express decision; for where money was devised to be laid out in land, for a *feme covert* in tail with reversion to her in fee, and a bill was filed by her, it was declared that she was entitled to the money, and a commission was ordered to be issued to examine her separate and apart

(*f*) *Carr v. Ellison*, 2 B. C. C. 56; *Earlom v. Saunders*, Amb. 241; *Thornton v. Hawley*, 10 Ves. 129, 139; *Van v. Barnett*, 19 Ves. 102; *Seeley v. Jago*, 1 P. W. 389; *Re Harrop's Estate*, 3 Drew. 734; and see *Ashby v. Palmer*, 1 Mer. 301.

(*g*) *Ashby v. Palmer*, 1 Mer. 296.

(*h*) The election here treated of must not be confounded with that which a *feme covert* is bound to make under the general doctrine of election; as to which, see *Barrow v. Barrow*, 4 K. & J. 415, 419; *Griggs v. Gibson*, 1 L. R. Eq. 685; *Cooper v. Cooper*, 7 L. R. H. L. 53; [*Smith v. Lucas*, 18 Ch. D. 531; *Wilder v. Pigott*, 22 Ch. D. 263; *Re Wheatley*, 27 Ch. D. 606; *Re Vardon's Trusts*, 28 Ch. D. 124.]

(*i*) See *Henley v. Webb*, 5 Mad. 407.

(*k*) *Oldham v. Hughes*, 2 Atk. 453.

from her husband, touching the disposition thereof (*l*). [So in a recent case, money in Court which had arisen \* from a sale under the Partition Acts, and to [\* 955] shares in which married women were entitled, was, upon their being separately examined and consenting, distributed as personal estate (*m*); and where the share of the married women is less than 200*l*. the Court will dispense with her separate examination (*n*).]

4. Previously to the Fines and Recoveries Act, if a *feme covert* was entitled to the proceeds of land directed to be sold, she and her husband might have made a title to the proceeds of sale by fine (*o*); and by the same method, as it would seem, might have made themselves absolute owners, and have called for a conveyance, and by this means have elected to take the land.

How she might elect to take land directed to be sold.

5. By 3 & 4 W. 4, c. 74, ss. 40, 71, 77 (*p*), a married woman is enabled, with the concurrence of her husband, and with the formalities required by the Act, to dispose of any estate at law or in equity, or any interest, charge, lien, or incumbrance in or upon lands, or money to be laid out in a purchase of lands, or to relinquish or release any power over the same, as if she were a *feme sole*; so that in the case of money liable to be laid out in land, a *feme covert* can, through the medium of the power of disposition conferred by the Act, virtually elect to take the money.

Fines and Recoveries Act.

6. And the Act enables a married woman not only to dispose of property which, though personal estate in fact, is real estate in equity, but also of property which is in equity *personal estate*, provided only it be an *interest in land*; and this, although according to the ordinary doctrines of the Court the married woman would, by reason of her interest being *reversionary*, have no such power of disposition. Thus, where real estate is devised upon trust for sale in terms amounting to a conversion out and out, and a married woman takes a share of the proceeds, she can, under the statute, dispose of her share, even though *reversionary*, as being an interest in land (*q*). And it is conceived that the

Special power of married women under Fines and Recoveries Act over money which is an *interest in land*.

(*l*) *Binford v. Bawden*, 1 Ves. jun. 512; [and from a subsequent report of this case, 2 Ves. 38, it appears that the *feme covert* on being examined elected to have the money paid to her husband; and see *Standerling v. Hall*, 11 Ch. D. 652.]

[*(m)* *Standerling v. Hall*, 11 Ch. D. 652; see *ante*, p. 750.]

[*(n)* *Wallace v. Greenwood*, 16 Ch. D. 362; but see *Re Shaw*, 49 L. J. N. S. Ch. 213.]

(*o*) *May v. Roper*, 4 Sim. 360; *Forbes v. Adams*, 9 Sim. 462.

(*p*) Extended to contingent interests by 8 & 9 Vict. c. 106, s. 6.

(*q*) *Briggs v. Chamberlain*, 11 Hare, 69; *Tuer v. Turner*, 20

same principle must apply to the case of a reversionary *money legacy raisable out of land*, notwithstanding the doubts entertained by Lord Justice (then Vice-Chancellor) Knight Bruce, in the case of *Hobby v. Collins* (r). [\*956] \* But the Fines and Recoveries Act ceases to apply when the money has been actually raised (s).

[As a married woman has an absolute power of disposition over property settled to her separate use, or belonging to her as her separate property under the recent Act (t), she can elect to take it either as land or money as if she were *sui juris* (u).]

A person  
may elect,  
subject to a  
charge.

7. If A. convey an estate to a trustee in trust to sell and pay to the trustee a certain amount, and to pay the balance to A., his executors, administrators, and assigns as personalty, it is competent to A., as the person entitled subject to the charge, to elect to take it as realty; and if he do so, and the trustee sells after A.'s decease, the heir of A. will take the surplus (v).

Remainder-  
men.

8. How far a remainderman may elect, has not been definitely settled. It seems clear, so far, that the remainderman may elect for the purposes of disposition; that is, being absolutely entitled to the interest in remainder, he may deal with it by act *inter vivos*, or by will, by any denomination that he pleases; and if, therefore, in the case of money impressed with the character of land, he chooses to call it personal estate, it will pass by his will under the description of personal estate (w). But should the remainderman declare an intention of taking the money as personalty, and then die, in the lifetime of the tenant for life, *intestate*, will the money devolve, as between the real and personal representative, as realty or personalty? If the tenant for life call for a conversion, and the money is actually laid out on a purchase of land, it is of course too late then for the remainderman to elect to take it as money; for, as the property is now in the shape of land, the policy of the law will not allow him to impress upon it the character of personalty. Supposing the remainderman to

Beav. 560; *Bowyer v. Woodman*, 3 L. R. Eq. 313; [*Re Jake-  
man's Trusts*, 23 Ch. D. 344;] and see *Franks v. Bollans*, 3 L.  
R. Ch. App. 717.

(r) 4 De G. & Sm. 289; and see observations of Lord St. Leonards in his essay on the Real Property Statutes, 240.

(s) *Re Alge*, 2 I. R. Eq. 485.

[(t) 45 & 46 Vict. c. 75.]

[(u) *Re Davidson*, 11 Ch. D. 341.

(v) *Re Gardiner's Trust*, 1 Eq. Rep. 57; *Mutlow v. Bigg*, 1 Ch. D. 385; [*Meek v. Devenish*, 6 Ch. D. 566.]

(w) *Lingen v. Sowray*, 1 P. Wms. 172; *Harcourt v. Seymour*, 2 Sim. N. S. 12; *Re Skeggs*, 2 De G. J. & S. 533.

elect to take the property as money, *before the actual conversion*, and then to die intestate, and after his death the tenant for life calls for a conversion, and the money is laid out in a purchase of land accordingly, it is conceived, that, as the election was made subject to another's right to call for a conversion, which right was exercised, the act of election is defeated, and the property will devolve as land (*x*). Should the remainderman elect to take the money as such, and then \* die intestate, and the tenant for life *never* [\*957] *calls for a conversion*, it may be argued, that, as the remainderman is absolutely entitled, subject to another's right to require conversion which was never exercised, the money, being still found in that shape, should be discharged from the impress of realty, and be deemed to have that character in which the remainderman was desirous of taking it (*y*). Such a doctrine, however, is open to the objection that during the life of the tenant for life the nature of the remainderman's interest, whether real or personal, would be uncertain, and dependent on the option of the tenant for life; and the principle acted upon in a recent case appears to be, that there can be no election by a person whose interest is a limited one or contingent at the time (*z*).

[9. But in a more recent case, where real estate was devised to trustees upon trusts for sale, and the proceeds were, subject to a charge, given in a contingent event to the testator's son absolutely, it was held that the son could, pending the contingency, elect to take the property as realty (*a*).] [A person contingently entitled may elect.]

10. Where an estate is directed to be sold, the proceeds to be divided amongst *several persons*, no one *singly* can elect that his own undivided share shall not be disposed of but shall remain realty (*b*), for the other undivided shares will not sell so beneficially in propor- Election where an estate is to be sold or money is to be laid out on land, and several parties are interested.

(*x*) *Holloway v. Radcliffe*, 23 Beav. 163. This was the case of an undivided share, but the principle was the same. But see *Re Gardiner's Trust*, 1 Eq. Rep. 57.

(*y*) See *Re Skeggs*, 2 De G. J. & Sm. 533; *Stead v. Newdigate*, 2 Mer. 531; *Gillies v. Longlands*, 4 De G. & Sm. 379; *Re Pedder's Settlement*, 5 De G. M. & G. 890; *Re Stewart*, 1 Sm. & G. 32.

(*z*) *Sisson v. Giles*, 3 De G. J. & S. 614; [and see *Walrond v. Rosslyn*, 11 Ch. D. 640.]

[(*a*) *Meek v. Devenish*, 6 Ch. D. 566.]

(*b*) *Holloway v. Radcliffe*, 23 Beav. 163; *Fletcher v. Ashburner*, 1 B. C. C. 500, *per* Sir T. Sewell; *Death v. Hale*, 2 Moll. 317; and see *Smith v. Claxton*, 4 Mad. 494.

Tenant in  
tail may  
elect.

tion as if the estate were entire (c)<sup>1</sup>; but if money be directed to be laid out in lands to be settled on A. B. and C., as tenants in common, any one of them may elect to take his own third as money, for two thirds may be invested just as advantageously as the whole sum (d).

11. Sound principle would require that a *tenant in tail* of lands to be purchased should not be allowed to elect, because the interests of the issue and the remainderman, who both take by title paramount, would otherwise be prejudiced. But the old rule appears to have been, that a tenant in tail might in *every case* have elected, and on filing a bill would have been entitled to the money (e); and the principle upon which the practice [\* 958] was grounded \* was said to be, that equity will do nothing in vain, and it were useless to direct an actual purchase and settlement when the tenant in tail the next moment might dispose of the fee simple. Lord Cowper, however, in the case of *Colwal v. Shadwell* (f), took the distinction, that where the *remainder in fee* was not vested in the tenant in tail himself, but was limited over to a stranger, there, as the absolute fee could only be acquired by a *recovery*, which was a thing of time, and could not be suffered in *vacation*, the remainderman should not lose his chance; and as in that case the tenant in tail did actually die before the recovery was suffered, it showed the remainderman's interest in so glaring a light, that it established the precedent ever afterwards (g). But even then the money would have been decreed to the tenant in tail, provided the remainderman had waived his right and consented to the payment (h).

Lord  
Chancellor  
King's  
doubt.

12. In *Eyre's case* (i), Lord Chancellor King was for extending the same protection to the *issue*. "I cannot see," he said, "why I should not have the like regard to the *issue* in tail as for the *remainderman*. It is possible the tenant in tail, before he can light on a pur-

(c) *Chalmer v. Bradley*, 1 J. & W. 59; *Holloway v. Radcliffe*, 23 Beav. 163; and see *Trower v. Knightley*, 6 Mad. 134.

(d) *Seeley v. Jago*, 1 P. W. 389; *Walker v. Denne*, 2 Ves. jun. 182, *per* Lord Loughborough.

(e) *Cunningham v. Moody*, 1 Ves. 176, *per* Lord Hardwicke.

(f) Cited *Chaplin v. Horner*, 1 P. W. 485.

(g) See *Cunningham v. Moody*, 1 Ves. 176; *Talbot v. Whitfield*, Bunb. 204.

(h) See *Trafford v. Boehm*, 3 Atk. 440, and the cases cited under note (c), p. 960.

(i) 3 P. W. 13.

<sup>1</sup> *Willing v. Peters*, 7 Barr. 290; *Beatty v. Byers*. 6 Harris, 105.



chase and settle it, may die, leaving issue, and this is a chance of which I would not deprive such issue." And in *Speaker Onslow's case* (*k*), he declared his adherence to the same opinion. But the rule which had been established before his time (*l*) of paying the fund to the tenant in tail where the uses might be barred by fine, but not where they could only be barred by recovery, appears, notwithstanding his Lordship's authority, to have been revived by his successors (*m*).

13. And the election of the tenant in tail need not necessarily have been made in a suit, but might have been expressed by act *in pais*, as if tenant in tail with remainder to himself had received the money of the trustee, or if tenant in tail with remainder to a stranger had received it of the trustee with the consent of the remainderman (*n*).

Tenant in tail may elect without suit.

\* Lord Thurlow, indeed, once said, "If the [\* 959] fund be outstanding in trustees, and it is necessary to come hither in order to obtain it, the money, when obtained, will be personal property; and so it would also, if the trustees pay it without suit. That is, supposing the estate, when purchased, would be a fee simple, for it would be otherwise in case of its being an estate tail" (*o*). But the concluding remark must have been intended (as Mr. Serjeant Hill, in a note on the passage, has justly observed (*p*)) to apply, not to every tenant in tail, as, not to tenant in tail with remainder to himself in fee, but only to tenant in tail, with remainder to a stranger; for in a subsequent case, where the tenant in tail had executed an assignment of two sums of money directed to be laid out in lands, his Lordship said, "As to the 500*l*. the assignor was tenant in tail, remainder to a stranger, remainder to himself in fee; as to the 1000*l*. he was tenant in tail, with remainder in fee to himself. I am clear, that in regard to the 1000*l*. he had the absolute dominion over it, having the immediate remainder in fee; but as to the 500*l*. I am equally clear the other way, because of the intermediate remainder" (*q*).

Observation of Lord Thurlow.

(*k*) 3 P. W. 14, note (G).

(*l*) See *Benson v. Benson*, 1 P. W. 130, note (1).

(*m*) *Trafford v. Boehm*, 3 Atk. 447, *per* Lord Hardwicke; *Cunningham v. Moody*, 1 Ves. 176, *per eundem*; *Binford v. Bawden*, Ves. jun. 512; *Holderness v. Carmarthen*, 1 B. C. C. 382, *per* Lord Thurlow; and see the preamble of 39 & 40 G. 3, c. 56.

(*n*) *Trafford v. Boehm*, 3 Atk. 448; and see *Earl of Bath v. Earl of Bradford*, 2 Ves. 590; but see *Pearson v. Lane*, 17 Ves. 106.

(*o*) *Pulteney v. Darlington*, 1 B. C. C. 236.

(*p*) *Ib.* note (*a*), Lord Henley's edit.

(*q*) *Holderness v. Carmarthen*, 1 B. C. C. 382

39 & 40 G. 3,  
c. 56.

14. By 39 & 40 G. 3, c. 56 (*r*), the inability of the tenant in tail with remainders over of money to be laid out in the purchase of land to obtain possession of the money, except through the medium of a fictitious purchase (*s*), was removed; and the Court was empowered, on the petition of the first tenant in tail of such money-land, and of the parties (if any) having antecedent estates therein (with a provision for the separate examination of married women), to order the money to be paid to the petitioners or as they should appoint (*t*), so that a kind of statutory power of election was thus conferred on tenants in tail.

Fines and  
Recoveries  
Act.

15. By the Act for the abolition of Fines and Recoveries (*u*), a tenant in tail may, with the consent of the protector of the settlement, if any, dispose absolutely of the lands entailed *at any time, whether in term or vacation*, and by the 71st section of the statute it is enacted, that "money to be invested in the purchase of lands to be settled so that any person, if the lands were purchased, would have an estate tail therein, shall be [ \* 960 ] treated as the lands to be purchased, \* and the previous clauses of the Act shall apply to such money, as if it were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled."

Whether  
tenant in  
tail of money  
liable to be  
laid out in  
land may  
still elect to  
take the  
money.

16. With respect to this enactment, a doubt suggests itself whether, even at the present day, a tenant in tail, *with remainder to himself in fee*, may not elect to take in its original character money which is liable to be laid out in the purchase of lands, and declare such election either by the institution of a suit or by act *in pais*. It is true that under the 71st clause of the late Act, the tenant in tail may at any time defeat his issue and the remaindermen by a deed executed with the proper formalities; but what is there to prevent him from exercising a power founded upon principles independent of the statute, and so acquiring the fee simple by the mere act of election? It may be said that the old rule, which made election a bar to the issue, might have been grounded on this—that, because no fine or recovery could have been levied or suffered of money (*v*),

(*r*) Repealed and extended by 7 G. 4, c. 45, which in its turn was repealed by 3 & 4 W. 4, c. 74, s. 70.

(*s*) See *Henley v. Webb*, 5 Mad. 407.

(*t*) See 5 Ves. 12, note (8), as to the qualifications introduced by the Court in making orders for payment under this Act.

(*u*) 3 & 4 W. 4, c. 74, s. 71.

(*v*) See *Benson v. Benson*, 1 P. W. 130; *Edwards v. Countess of Warwick*, 2 P. W. 174; *Maynwaring v. Maynwaring*, 3 Atk. 413.

the Court, on that account, held election to have the effect of a bar, lest the tenant in tail should lose the power, which the law intended him, of defeating the settlement, but that, since by the Fines and Recoveries Act a tenant in tail of money may bar his issue and the remainderman by the same formalities as if the lands were actually purchased and settled, the same indulgence ought not now to be shown. But to this it may be answered, that the tenant in tail was allowed to elect, not because the tenant in tail of money had a right to exercise the same powers of ownership as a tenant in tail of lands, but for the purpose of avoiding circuitry. Had the former been the principle, the tenant in tail might equally have barred the remainderman as the issue; but for the destruction of remainders an actual settlement was necessary, and a sham purchase was often resorted to for the purpose (*w*).

17. The practice of the Court in dealing with sums paid in by railway companies as compensation for portions of entailed land taken by them, went beyond any rule previously established, for the Court was in the habit of ordering the money to be paid to the tenant in tail without the execution of a disentailing deed, and without enquiring who was entitled in remainder (*x*). But in a \* recent case Lord Selborne sitting [ \* 961 ] for M. R. refused to order payment out of Court except on production of a disentailing deed in the ordinary way (*y*).

Practice of the Court as to monies paid in by railway companies.

## II. How election may be manifested.

1. The *act* of election may either be *presumed* by the Court or be *expressly declared*.

How election may be made.

2. The *presumption* may arise from slight circum-

(*w*) See — *v. Marsh*, cited *Chaplin v. Horner*, 1 P. W. 485, note (†); *Maynwarding v. Maynwarding*, 3 Atk. 413; *Henley v. Webb*, 5 Mad. 407.

(*x*) *Sowry v. Sowry*, 6 Jur. N. S. 337; *Re South Eastern Railway Company*, 30 Beav. 215; *Re Tyler's Estate*, 8 W. R. 540; *Nottley v. Palmer*, 1 L. R. Eq. 241; *Re Row*, 17 L. R. Eq. 300; *Re Holden*, 1 H. & M. 445 (where the amount of the fund in question was 1394*l.* Consols); *Re Watson*, 10 Jur. N. S. 1011 (in which case the Lords Justices said they could not understand how the Court could have first come to the conclusion in the face of the statute that the money could be paid out without the execution and enrolment of a disentailing deed, but the practice was useful and convenient, and saved expense). *Ex parte Maunsell*, 2 Ir. Rep. Eq. 32; *Re Wood's Settled Estates*, 20 L. R. Eq. 372.

(*y*) *Re Butler's Will*, 16 L. R. 479; and see *Re Broadwood's Settled Estates*, 1 Ch. D. 438; *Limerick and Ennis Railway Company Ex parte Smyth*, 10 I. R. Eq. 66; [*Re Reynolds*, 3 Ch. D. 61.]

- Presumption. stances of conduct (z). Thus it will be sufficient, where land is to be converted into money, if the *cestui que trust* enter into possession and take the title deeds into his own custody, for the trustees cannot recover the deeds from the *cestui que trust*, and they cannot sell without them (a); or if the *cestui que trust* merely keep the estate for a length of time unsold (b) (but in one case a period of two years was considered not to be sufficient indication of such an intention (c)); or, where money is to be turned into land, if the *cestui que trust* receive the money from the trustee (d); but not if he merely receive the annual income though for a considerable length of time (e).
- Possession of the land. 3. It was determined by Lord Harcourt that a *cestui que trust* had divested money of its real quality by causing the securities to be changed, and the trust to be declared to himself and his *executors*; for this, he observed, was tantamount to saying the money should not go to the heir (f); and *vice versa*, where land was to be converted into money, it was held by Lord Hard- [\* 962] wicke, that a lease by \*the *cestui que trust*, reserving a rent to her *heirs* and assigns, was evidence of an intention to continue the property as real estate (g)<sup>1</sup>.
- Receipt of the money. 4. To constitute an act of election it is not necessary that the person entitled, as for instance to money to be laid out in land, should know that but for the act of
- Change of securities and trust declared for the "executors."
- Grant of a lease and reservation of rent to the "heirs."
- What knowledge required for election.

(z) See *Pulteney v. Darlington*, 1 B. C. C. 238; *Van v. Barnett*, 19 Ves. 109; *Bradish v. Gee*, Amb. 229; *Dixon v. Gayfere*, 17 Beav. 433; [*Roberts v. Gordon*, 6 Ch. D. 531]

(a) *Davies v. Ashford*, 15 Sim. 42; and see *Padbury v. Clark*, 2 Mac. & G. 298.

(b) See *Ashby v. Palmer*, 1 Mer. 301; *Dixon v. Gayfere*, 17 Beav. 433; *Griesbach v. Fremantle*, 17 Beav. 314; *Mutlow v. Bigg*, 1 Ch. D. 385; [*Roberts v. Gordon*, 6 Ch. D. 531; *Re Davidson*, 11 Ch. D. 341.]

(c) *Kirkman v. Miles*, 13 Ves. 338; *Cookson v. Cookson*, 12 Cl. & Fin. 121; and see *Brown v. Brown*, 33 Beav. 399; *Parker v. Williams*, 15 W. R. 1006; but see *Crabtree v. Bramble*, 3 Atk. 688; *Inwood v. Twyne*, 2 Eden, 148.

(d) *Pulteney v. Lord Darlington*, 1 B. C. C. 238 *per* Lord Thurlow; *Trafford v. Boehm*, 3 Atk. 440; and see *Rook v. Worth*, 1 Ves. 461.

(e) *Gillies v. Longlands*, 4 De G. & Sm. 372; and see *Re Pedder's Settlement*, 5 De G. M. & G. 890.

(f) *Lingen v. Sowray*, 1 P. W. 172; and see *Cookson v. Cookson*, 12 Cl. & Fin. 121; *Harcourt v. Seymour*, 2 Sim. N. S. 12.

(g) *Crabtree v. Bramble*, 3 Atk. 680, see 688, 689; and see *Griesbach v. Fremantle*, 17 Beav. 314.

<sup>1</sup> In *Beatty v. Byers*, 6 Harris (Pa.), 105, it was declared that the act must be clear and unequivocal and of such a character as to leave no reasonable doubt of the intent.

election it would pass as land, but it is sufficient if the Court can collect the intention that with or without such knowledge he meant the money to be dealt with and treated as money (*h*).

5. A person may *express* his election, even by parol. Election This, at least, was the opinion of Lord Macclesfield (*i*), expressed. and apparently was actually decided in the case of *Chaloner v. Butcher* (*k*), in which the husband having declared that the money should not be laid out in land, the Court held, that, if the question concerned the right of a third person, the declarations of the husband ought not to be admitted, but, as it was between his personal and real representative, they should be read. And both Lord Thurlow (*l*), and Lord Eldon (*m*), seem to have lent their sanction to the same doctrine, so that an *obiter dictum* of Lord Hardwicke to the contrary (*n*), though supported by so illustrious a name, must be considered as over-ruled.

6. Where money bore the notional impress of realty, the *cestui que trust* might, until the late Wills Act, have bequeathed it as so much money to be laid out in land, and the money would have passed, though the will was not attested according to the Statute of Frauds (*o*); for the will operated first by way of election, and then by way of bequest; but now by the late Wills Act (*p*) the same formalities are required for the testamentary disposition of personal as of real estate.

How money to be turned into land affected by *cestui que trust's* will.

## \* SECTION II.

[ \* 963 ]

### THE ACT OF THE TRUSTEE SHALL NOT ALTER THE NATURE OF THE CESTUI QUE TRUST'S ESTATE.

1. At *law* the trustee is the absolute owner of the land or fund, and therefore may exercise any control or dominion over it—may convert realty into personalty, or personalty into realty: but *equity*, which regards the

Power of the trustee at law and in equity.

(*h*) *Harcourt v. Seymour*, 2 Sm. N. S. 12, see p. 46.

(*i*) *Edwards v. Countess of Warwick*, 2 P. W. 174.

(*k*) Cited *Crabtree v. Bramble*, 3 Atk. 635.

(*l*) *Pulteney v. Darlington*, 1 B. C. C. 237.

(*m*) *Wheldale v. Partridge*, 8 Ves. 236.

(*n*) *Bradish v. Gee*, Amb. 229.

(*o*) See the cases cited, *Lechmere v. Earl of Carlisle*, 3 P. W. 221, note (C); and see *Pulteney v. Darlington*, 1 B. C. C. 235, 236; *Sharp v. St. Sauveur*, 7 L. R. Ch. App. 343.

(*p*) 7 W. 4, & 1 Vict. c. 26.

trustee as a mere instrument for the execution of the trust, will not permit the interest of the *cestui que trust* to be affected by any act of misconduct, but, as often as any wrongful conversion is made, will transfer to the new interest the quality and character of the old—will treat real estate as personal, and personal as real, as the circumstances of the case may require.

Where the *cestui que trust* is *sui juris*.

2. But although every such change in the nature of the property as is not made either in pursuance of the trust or by the authority of the beneficial owner, must in general be considered a misfeasance, the dealings of the Court (under the respective jurisdictions of *lunacy* and *chancery*), and of committees, guardians, and trustees, with the property of *lunatics* and *infants*, require particular notice.

Power of the trustee where the *cestui que trust* is a lunatic.

3. It has been laid down as a general rule in *lunacy*, that the Court will not alter the condition of the lunatic's property to the prejudice of his successors; but the maxim must be received with the qualification, *except it be for the benefit of the lunatic himself* (*q*). The Chancellor takes the advice and assistance of the presumptive next of kin and presumptive heir at law in the care and management of the property (*r*); but through all the cases runs this prevailing principle—that the object of attention is exclusively and entirely the interest of the lunatic, without any regard to those who may have eventual rights of succession (*s*). If the Court considered how the representatives would be affected, there would always be among them an emulation of each other, and their speculations, if the administrator were to engage in them, would \*mislead his attention as to the interest of the only person he was bound to protect; there would be a continued running account between the personal and real estates; the Chancellor would be perpetually looking to the right or left, and the interest of the lunatic would be committed in favour of those who have no immediate interest, and whose contingent interests are left to the ordinary course of events (*t*).

The interest of the lunatic the exclusive object.

(*q*) *Ex parte* Grimstone, cited *Oxenden v. Lord Compton*, 4 B. C. C. 235, note, *per* Lord Apsley.

(*r*) *Ex parte* Phillips, 19 Ves. 123, *per* Lord Eldon.

(*s*) *Oxenden v. Lord Compton*, 2 Ves. jun. 72; and S. C. 4 B. C. C. 233, *per* Lord Thurlow; and see *Ex parte* Bromfield, 1 Ves. jun. 462; *Ex parte* Grimstone, Amb. 708; S. C. cited 2 Ves. jun. 75, note (*x*), and 4 B. C. C. 235, note; *Ex parte* Phillips, 19 Ves. 123; *Dormer's case*, 2 P. W. 265; *Ex parte* Chumley, 1 Ves. jun. 297; *Ex parte* Baker, 6 Ves. 8.

(*t*) *Oxenden v. Lord Compton*, 2 Ves. jun. 72, 73; S. C. 4 B. C. C. 233, 234, *per* Lord Loughborough.

4. Upon this principle, where a lunatic was seised *ex parte paternâ* of estate A., and *ex parte maternâ* of estate B., and the latter was subject to a mortgage, the money arising from a fall of timber upon A. was directed to be applied in discharge of the mortgage upon B.; and upon a question between the respective heirs it was held, that the representative who succeeded to A. was not entitled to any recompense from the representative who inherited B (u).

5. So, if the lunatic be considerably indebted, and it appears that his maintenance would be better provided for, and his advantage promoted, by the sale of a real estate inconvenient and ill-conditioned, instead of exhausting the personalty, the Court, on a proper representation of the case, would have no difficulty in making an order to that effect (v).

[6. And where a lunatic became absolutely entitled to funds which were vested in trustees upon trust to lay them out in the purchase of land, but which were actually invested on mortgage, and the mortgage money was got in pursuant to an order in the lunacy expressing that it was for the benefit of the lunatic to call it in, and was thereafter dealt with in the lunacy with other monies admittedly personalty, it was held that the fund had been reconverted into personalty (w).]

7. So, timber which *ought to be cut* on a lunatic's estate may be felled by the direction of the Court, and the proceeds may either be applied to the redemption of the land-tax, or payment of debts (x), or to any other purpose which the true interest of the lunatic may require; or if not wanted for any particular purpose, will go to the next of kin as personalty, and not to the heir as part of the realty (y).

\* 8. So, if it be necessary for the interest of [ \* 965 ] the real estate to bring an action of trespass, resort may be had with that object to the lunatic's personal fund (z).

(u) *Ex parte Phillips*, 19 Ves. 123, *per* Lord Eldon; but see *Re Leeming*, 3 De G. F. & J. 43.

(v) *Ex parte Phillips*, 19 Ves. 124, *per* Lord Eldon.

[(w) *M'Donogh v. Nolan*, 9 L. R. Ir. 262.]

(x) *Ex parte Phillips*, 19 Ves. 119; *Bevan's case*, cited *Ex parte Bromfield*, 1 Ves. jun. 455, 457; *Re Mary Smith (a lunatic)*, 10 L. R. Ch. App. 84, *per* L. J. James.

(y) *Ex parte Bromfield*, 1 Ves. jun. 453; S. C. 3 B. C. C. 510; *Oxenden v. Compton*, 2 Ves. jun. 69; S. C. 4 B. C. C. 231; *Shelley's case*, cited 1 Ves. jun. 457; *Ex parte Phillips*, 19 Ves. 124, *per* Lord Eldon. The *dictum* in *Marquis of Anandale v. Marchioness of Anandale*, 2 Ves. 384, must be considered as overruled.

(z) *Oxenden v. Lord Compton*, 2 Ves. jun. 72; *per* Lord Loughborough.

Improvements.

Necessary expenses of real estate.

Conversion not allowed, except where it is clearly for the lunatic's benefit.

9. By the same rule the money of the lunatic may be laid out in improvements (a); and the Chancellor, acting *tanquam bonus pater-familias*, may take every opportunity of ameliorating the estate by fair and ordinary means, such as draining, inclosure, &c. (b), erecting a steam engine for the purpose of working a coal mine (c), but must not engage in risks and dangerous adventures (d). And of course the personalty may be drawn upon for *necessary expenses*, as repairs (e), fines for renewal of leases, or admission to copyholds (f). But where the committees of a lunatic, who were entitled to the estate themselves after his death, laid out a sum in *purchasing* timber for repairs, when they ought to have cut timber on the estate, Lord Hardwicke said, that, having done so merely to serve their own interest, they should make good the disbursement to the lunatic's next of kin (g).

10. In the preceding cases the conversion has been for the clear benefit of the lunatic, but in general the Court will not lightly change the condition of the property, but will only act on pressing and urgent occasions (h); it will interfere with great caution, and do nothing that is unnecessary or uncalled for (i). The Court will not *buy and sell* for the lunatic (j); and, therefore, if the committee of a lunatic wantonly, and

(a) *Sergeson v. Sealey*, 2 Atk. 414, *per* Lord Hardwicke; *Dormer's case*, 2 P. W. 262; [*Re Gist*, 5 Ch. D. 881.]

(b) See Justice De Grey's argument in *Ex parte Grimstone*, cited *Oxenden v. Lord Compton*, 2 Ves. jun. 75, note.

(c) *Oxenden v. Lord Compton*, 2 Ves. jun. 73.

(d) *Ib.* *per* Lord Loughborough.

(e) *Sergeson v. Sealey*, 2 Atk. 414, *per* Lord Hardwicke; *Ex parte Grimstone*, Amb. 708; S. C. cited *Oxenden v. Lord Compton*, 4 B. C. C. 237, note, *per* Lord Apsley; 2 Ves. jun. 72, *per* Lord Loughborough; *Newport's case*, cited *Ib.*; [*Re Gist*, 5 Ch. D. 881.] *Re Badcock*, 4 M. & Cr. 440. But it was said in the last case, that "if the money were laid out in a purchase of land, or, what was the same thing, in building a farm house, it would be right that the sum so laid out should retain its character of personalty."

(f) Justice De Grey's argument in *Ex parte Grimstone*, *ubi supra*; but see *Degg's case*, cited *Oxenden v. Lord Compton*, 4 B. C. C. 235, note.

(g) *Ex parte Ludlow*, 3 Atk. 407.

(h) *Ex parte Bromfield*, 1 Ves. jun. 463, and 3 B. C. C. 515, *per* Lord Thurlow; and see *Re Mary Smith* (a lunatic), 10 L. R. Ch. App. 79.

(i) *Oxenden v. Lord Compton*, 2 Ves. jun. 76, and 4 B. C. C. 238, *per* Lord Loughborough.

(j) *Oxenden v. Lord Compton*, 2 Ves. jun. 73, *per* Lord Loughborough; *Ex parte Grimstone*, cited in *Oxenden v. Lord Compton*, 4 B. C. C. 235, note, *per* Lord Apsley; *Sergeson v. Sealey*, 2 Atk. 414, *per* Lord Hardwicke.



of his own head, lay out money upon \* land, [\* 966] or turn land into money, the Court will not suffer such fraudulent management to affect the rights of the representatives (*k*), but will transfer to the heir what ought to have remained real estate, and to the next of kin what ought to have remained personal estate (*l*). [So, where a lunatic was tenant in tail in possession of large estates, upon which it was desirable to expend a considerable sum for repairs and improvements, and he was also entitled to a fund in Court sufficient for the required outlay, it was held that the expenses of the repairs and improvements on the settled estates ought to be raised by mortgage or charge of those estates, and that the fund in Court ought not to be applied for the purpose (*m*).] So, where a mortgage upon the lands of a lunatic is discharged out of his personal estate, though it was formerly held that the next of kin after the lunatic's decease had no *lien* upon the real estate for the amount expended (*n*), it has since been ruled that the personal estate after the lunatic's death shall be recouped the amount expended in exonerating the real estate (*o*). [And where a mortgage of a lunatic's real or leasehold property is paid off out of his personal estate the mortgage should not be re-conveyed to the lunatic, but should be kept on foot by transferring it to the committee, to be disposed of as the Court may direct, so as to leave open the question how the mortgage debt should ultimately be borne (*p*).] However, if timber be cut down, not by a committee in breach of his duty, but by a stranger tortiously, then, as there is no abuse of confidence, the heir has no equity, and the property of the timber, like a windfall, will belong to the executor (*q*).

Personal estate applied to relief of real estate.

[Transfer of mortgage should be taken.]

[11. Where a copyhold estate, as to which the rules of descent were different from those of freeholds, was enfranchised, the Court inserted a declaration in the order sanctioning the enfranchisement, carrying over the equitable interest in the enfranchised property, in

[Right of customary heir preserved in equity on enfranchisement.]

(*k*) See *Ex parte* Bromfield, 1 Ves. jun. 462.

(*l*) Anon. case, 2 Freem. 114; *Awdley v. Awdley*, 2 Vern. 292; *Marquis of Anandale v. Marchioness of Anandale*, 2 Ves. 384, per Lord Hardwicke; and see *Re* Badcock, 4 M. & Cr. 440.

[(*m*) *Re* Gist, 5 Ch. D. 881.]

(*n*) *Ex parte* Grimstone, Amb. 786; S. C. cited *Oxenden v. Compton*, 4 B. C. C. 235, and *Weld v. Tew*, Beat. 272.

(*o*) *Weld v. Tew*, Beat. 266; *Re* Leeming, 3 De G. F. & J. 43.

[(*p*) *Re* Melly, 49 L. T. N. S. 429.]

(*q*) Anon. case, cited *Ex parte* Bromfield, 1 Ves. jun. 462, and 3 B. C. C. 515, per Lord Thurlow.

the event of the lunatic dying intestate, to the persons who would have taken it if it had not been enfranchised (r).

So where part of the personal estate of the lunatic was laid out in the purchase of real estate as a convenient mode of investment, a declaration was inserted in the conveyance in conformity with the terms of the order, that the premises granted were to all intents and purposes to be considered as part of the personal estate of the lunatic; and this was held to be sufficient to cause the property to retain its character of personality though invested in land, and to make the land subject to probate duty on the death of the lunatic; *Attorney-General v. Marquess of Ailesbury*, 14 Q. B. D. 895.

[Out of what fund lunatic to be maintained.]

12. Where property is vested in trustees in trust to apply the income for the maintenance of a lunatic during his life, and any surplus income not required is to [\*967] be *accumulated as capital* and \* the lunatic is absolutely entitled to other property, the Court will apply the life interest, in the first place, towards his maintenance, unless the trustees of the settled property have an absolute discretion whether they will apply the whole or any part of the income for the lunatic's benefit, in which case the exercise of such discretion will not be interfered with (s).]

Next as to *infants*.

Infants distinguished from lunatics.

1. Lord Thurlow, on one occasion, but without having examined the authorities, said he could not distinguish between lunatics and infants (t); but, when the matter came on again, and he had maturely considered the subject, he never once hinted at the existence of such a doctrine (u); and, indeed, until the late Wills Act there was a very broad distinction between the two cases; for if a *lunatic* recovered, which in contemplation of law is always possible, he had precisely the same power of disposition, though by different modes, over one species of property as over the other (v); but an *infant*, while he could have bequeathed personal estate under the age of twenty-one, could not have devised a freehold until he had attained that age (w). The Court, therefore, would not allow an infant's estate to

[(r) *Re H. D. Ryder*, 20 Ch. D. 514.]

[(s) *Re Weaver*, 21 Ch. D. 615.]

(t) *Ex parte Bromfield*. 1 Ves. jun. 461; S. C. 3 B. C. C. 515.

(u) *Oxenden v. Lord Compton*, 2 Ves. jun. 69; S. C. 4 B. C. C. 231.

(v) See *Ex parte Phillips*, 19 Ves. 123.

(w) See *Earl of Winchelsea v. Norcliffe*, 1 Vern. 437 in which case the distinction appears first to have been noticed.

be converted from one species of property into another, not from any tenderness to the rights of the representatives, but from a regard to the circumstances and capacity of the infant himself. Should his money have been turned into land, he would have lost a power of disposition which the law permitted him to exercise: should land have been turned into money, he would indirectly have gained a power which the policy of the law had forbidden him (x)<sup>1</sup>.

2. Upon the same principle, had timber been cut on an infant's estate, the proceeds, and, it seems, the accumulation of the proceeds (y), would have continued part of the realty, and have descended to the heir (z). But a distinction was taken in *Mason v. [ \*968 ]* *Mason* (a), (and Sir Thomas Clarke said he allowed it (b),) between the case of an infant tenant in fee and an infant tenant in tail: that in the former case the proceeds of the timber should be taken as realty, inasmuch as the infant was thus at all events absolutely entitled; but in the latter case, as the proceeds might, if impressed with the character of realty, become vested in the remainderman, the Court would treat the fund as personalty, and give it to the infant's executors.

3. Again, if an infant's money had been applied to pay off a charge, or redeem a mortgage affecting his real estate, it was the better opinion (though some old authorities were against it), that the sum so invested would still be looked upon as part of the personalty (c).

(x) *Ware v. Polhill*, 11 Ves. 278, and *Ex parte Phillips*, 19 Ves. 122, *per* Lord Eldon; *Ashburton v. Ashburton*, 6 Ves. 6; *Surgeon v. Sealey*, 2 Atk. 413; and *Rook v. Worth*, 1 Ves. 461, *per* Lord Hardwicke; *Witter v. Witter*, 3 P. W. 99; but see *Earl of Winchelsea v. Norcliffe*, 1 Vern. 435; *Inwood v. Twyne*, 2 Eden, 152; *Ex parte Bromfield*, 1 Ves. jun. 461.

(y) See *Ex parte Bromfield*, 1 Ves. jun. 454.

(z) *Tullet v. Tullet*, 1 Dick. 322; S. C. Amb. 370; *Mason v. Mason*, cited Ib. 371; *Ex parte Phillips*, 19 Ves. 124, *per* Lord Eldon; and see *Rook v. Worth*, 1 Ves. 461; but see *Ex parte Bromfield*, 3 B. C. C. 516.

(a) *Ubi supra*.

(b) *Tallet v. Tallet*, Amb. 371; and see *Dyer v. Dyer*, 34 Beav. 504.

(c) *Ex parte Bromfield*, 3 B. C. C. 516, *per* Lord Thurlow; *Tul-*

<sup>1</sup> In most of the United States there are statutes which authorize the guardian or trustee of an infant, on order of Court obtained by application showing that a conversion would be advantageous to the infant to sell his real estate and re-invest the proceeds in some other way. *Field v. Schieffelin*, 7 Johns. Ch. 150; *Bank of Va. v. Clegg*, 6 Leigh, 399; *Beal v. Harman*, 38 Mo. 435; but so far as guardian and infant are concerned, the proceeds of the sale remain real estate till the latter becomes of age; *Snowhill v. Snowhill*, 2 Green Ch. 20; *Lloyd v. Hart*, 2 Pa. St. 473.

Necessary  
expenses.

4. But *necessary expenses*, though affecting the infant's lands, were allowed to be thrown upon the personal fund as disbursements for repairs (*d*), for keeping up a house, &c. (*e*).

Vernon v.  
Vernon.

5. So, in *Vernon v. Vernon* (*f*), where an estate was devised to an infant in consideration of his paying the sum which the original purchase had cost, it was held, that the amount being a *necessary* outlay, had properly fallen upon the personalty, and the next of kin were not entitled to compensation.

Exceptions  
from the  
general rule.

6. There were some cases to which the reason for preserving the original character of the property did not apply. Thus; if an infant was seised of a lease for lives *ex parte maternâ*, and the guardian procured a new lease to be granted to the infant and his heirs, whereby the old lease was merged, the substituted lease would not descend in the maternal line, but, as a new acquisition, would go to the heirs on the part of the father (*g*); for it being perfectly immaterial to the infant himself whether the *seisin* was in the paternal or maternal line, the representative *ex parte maternâ* had no equity against the representative *ex parte paternâ*.

[Repairs.]

[7. Where repairs are absolutely necessary for the protection of an infant's property the Court has jurisdiction [\* 969] to direct the raising \* of the necessary funds by mortgage or sale of part of the infant's property (*h*). But the jurisdiction should be jealously exercised and only in cases which amount to actual salvage (*i*).]

Effect of late  
Wills Act.

8. By the late Wills Act (*k*), an infant has no greater testamentary power over personal than over real estate; and it remains to be seen how far the removal of the ground, so frequently relied upon, against permitting the conversion of the personal estate of an infant into realty, can be treated as having diminished the

---

let *v. Tullet*, 1 Dick. 323, *per* Sir T. Clarke; *Seys v. Price*, 9 Mod. 220, *per* Lord Hardwicke; *Dowling v. Belton*, 1 Flan. & Kelly, 462; but see 2 Freem. 114, c. 126; *Ex parte Grimstone*, Amb. 708; *Palmes v. Danby*, Pr. Ch. 137; *Zoach v. Lloyd*, cited *Awdley v. Awdley*, 2 Vern. 192; as to *Dennis v. Badd*, cited *ib.* 193, see *Earl of Winchelsea v. Norcliffe*, 1 Vern. 436.

(*d*) *Ex parte Grimstone*, cited *Oxenden v. Lord Compton*, 4 B. C. C. 235, note, *per* Lord Apsley.

(*e*) *Ex parte Grimstone*, Amb. 708, *per eundem*.

(*f*) Cited in *Ex parte Bromfield*, 1 Ves. jun. 456.

(*g*) *Mason v. Day*, Pr. Ch. 319; *Pierson v. Shore*, 1 Atk. 480.

(*h*) *Re Jackson*, 21 Ch. D. 786; *Glover v. Barlow*, 21 Ch. D. 788, note.]

[(*i*) *Per Kay, J., Re Jackson, ubi supra.*]

(*k*) 7 W. 4, & 1 Vict. c. 26.

rights of the next of kin, or as authorizing the application of the decisions in lunacy to the administration of the property of infants.

9. The leaning of the Courts would appear to be to *Dyer v. Dyer*. simplify the law by assimilating the case of infants to that of lunatics. Thus in a late case (*l*) an estate was devised to an infant, his heirs and assigns, with a limitation over on his dying under twenty-one, and timber was cut on the estate during the infancy with the sanction of the Court. The infant died without attaining his age, and the question was whether the proceeds belonged to the infant's personal representative, or should go with the estate to the person entitled under the limitation over, and Sir. J. Romilly, M. R. held it to be personalty, and evidently made no distinction between infancy and lunacy.

---

(*l*) *Dyer v. Dyer*, 34 Beav. 504. But if an estate be settled upon A. for life only, with remainders over, and the Court cuts the timber for the benefit of all parties interested, the proceeds will go along with the estate; *Field v. Brown*, 27 Beav. 90; unless the order be made upon the application of a remainderman entitled in fee-simple, subject to the prior estate; *Phillips v. Daycock*, W. N. 1867, p. 54.

## PRACTICE.

## CHAPTER XXXII.

IN this chapter we propose to consider such parts only of the practice of the Court as most materially affect trustees and their *cestuís que trust*, and are capable of being compressed within reasonable limits, viz.—*First*, Distringas; *Secondly*, Production of documents; *Thirdly*, Compulsory payment into Court; *Fourthly*, Receivership; and *Fifthly*, Costs of suit (*m*).

## SECTION I.

## OF DISTRINGAS.

Danger to which stock, &c., exposed in consequence of legal title only being recognized.

1. IN the case of stock transferable in the books of the Bank of England, and also in the case of the stocks and shares of many other public companies, no obligation exists on the part of the bank or public company to look beyond the title of the legal holder. The modern form of legislative enactment on the subject is usually to the effect that the company “shall not be bound to see to the execution of any trust, whether ex- [ \* 971 ] press, implied, or constructive” (*n*). \* Where, therefore, property of this description is held upon trust, the interests of the *cestui que trust* are peculiarly

[(*m*) In the sixth and earlier editions of this work, the subjects of parties to suits relating to trusts, and of the order and manner in which trustees and *cestuís que trust* ought to sue or be sued have been considered at some length, but in referring to those editions the recent changes in the practice of the Court must be borne in mind.]

(*n*) 8 Vict. c. 16, s. 20; and see 25 & 26 Vict. c. 89, s. 30.

liable to be endangered by the dishonesty of the trustee; and, indeed, but for the means of protection now about to be explained, would be almost entirely at his mercy.

2. The *distringas* was originally a process of the equity side (afterwards abolished) of the Court of Exchequer for compelling the appearance of a corporation to a bill filed, but formerly it was a common practice, more particularly in any emergency, to issue a subpoena before the bill was actually on the file. When, therefore, a party sought to restrain a transfer of stock, before he filed the bill against the holder of the stock and the bank (which was then a necessary party), to prevent any mischief in the interim, he served process immediately on the secretary of the bank to appear to the bill. But as the form of *distringas* gave no information as to the stock to be restrained, the *distringas* was accompanied with a notice in writing, which specified the stock, and required the bank not to permit the transfer. The effect of this was, that if the holder of the stock applied to the bank to make a transfer, the bank immediately forwarded a notice to the party issuing the *distringas*, that unless he actually filed a bill, and obtained and served an injunction before a certain day, they should permit the transfer to be made.

3. The 4 Anne, c. 16, s. 22, declared that no subpoena or other process for appearance should issue until after the bill was filed; and the 39 & 40 G. 3, c. 36, enabled suitors to obtain an injunction against the bank, without making the bank a party. However, in practice the *distringas* still continued to be served on the bank, and the same attention was paid to it in not allowing a transfer.

4. The convenience of the *distringas* was so sensibly felt, from the frequent necessity of laying an embargo upon stock at a moment's notice, that when 5 Vict. c. 5, abolished the equity side of the Exchequer, it was thought expedient to transfer the process to the Court of Chancery, and enlarge the remedy.

5. Accordingly, by section 4 of the Act referred to, it was by way of additional remedy enacted, that "it should be lawful for the Court of Chancery, upon the application of any party interested by motion or petition, in a summary way, without bill filed, to restrain the Bank of England or other company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company, or from paying any dividend or divi-

dends due or to become due thereon; and every [\* 972] \*order of the Court upon such motion or petition should specify the *amount of the stock*, or the particular shares to be affected thereby, and the *name or names of the person or persons, body politic or corporate, in which the same should be standing.*"

Practice under the 4th section.

6. An application to the Court under this section must be founded upon an affidavit verifying the special grounds upon which it proceeds (o). And when the order has been made, as it was not the intention of the Legislature to do more than protect the stock until the party could assert his right in the ordinary way, if the opposite party move to dissolve the injunction, and the Court sees that there has been great neglect on the part of the person who obtained the order, and that any extension of time would be oppressive to the party restrained, it will not as of course give further time for instituting proceedings (p). Under the former practice, when a bill had been filed, and an answer put in, and the defendant moved to discharge the restraining order, the plaintiff was allowed to file affidavits in opposition to the answer, and was not confined to the merits disclosed in the answer (q).

Transfer of the old writ of distringas.

7. By section 5 of the Act it is thus enacted: "In the place and stead of the Writ of Distringas, as the same has been heretofore issued from the Court of Exchequer, a Writ of Distringas in the form set out in the schedule to the Act shall be issuable from the Court of Chancery, and shall be sealed at the subpoena office, and the force and effect of such writ, and the practice under or relating to the same, shall be such as is now in force in the said Court of Exchequer: Provided, nevertheless, that such writ, and the practice under or relating to the same, and the fees and allowances in respect thereof, shall be subject to such orders and regulations as may, under the provisions of this Act, or of any other Act now in force, or under the general authority of the Court of Chancery, be made with reference to the proceedings and practice of the Court of Chancery."

Form of new writ.

In the Schedule to the Act, the form of the writ is as follows: "Victoria, &c., to the Sheriffs of London greeting. We command you that you omit not, by

(o) *Ex parte Field*, 1 Y. & C. C. C. 1; *Re Marquis of Hertford*, 1 Hare, 586; *Re Locke and others*, 18 W. R. 275.

(p) *Re Marquis of Hertford*, 1 Hare, 584; see same case, 1 Ph. 203.

(q) *Ib.* 1 Ph. 203; and see 15 & 16 Vict. c. 86, s. 59.



reason of any liberty, but that you enter the same, and distrain the *Governor and Company of the Bank of England*, by all their lands and chattels in your bailiwick, so that they, or any of them, do not intermeddle therewith until We otherwise \*command you ; and [ \*973] that you answer us the issue of the said lands, so that they do appear before us in our High Court of Chancery on the                      day of                      , to answer a certain bill of complaint lately exhibited against them and other defendants before us in our said Court of Chancery by                      complainant ; and, further, to do and receive what our said Court shall then and there order in the premises, and that you then leave there this writ. Witness," &c.

8. The Act, as we have seen, empowered the Court to regulate the practice of the *distringas*, and orders [were accordingly issued with that object (*r*); but the writ of *distringas* has now been superseded (*s*), and a notice substituted in its place, which is made to apply, not only to the Bank of England, but to all companies, whether incorporated or not, and the practice in relation to such notices is now regulated by Order 46, rules 2—10, of the Rules of the Supreme Court, 1883.]

9. The present course is as follows:—The party seeking the benefit of the Act prepares a notice, and makes an affidavit in the forms prescribed by the general order. The notice and affidavit are then filed in the Central Office, and an office copy of the affidavit and a duplicate of the notice, authenticated by the seal of the Central Office, are obtained and served on the bank or company; and such service has the same force and effect against the bank or company, as a writ of *distringas* duly issued under the 5th section of the Act previously had. [Present practice as to obtaining and serving the notice in lieu of *distringas*.]

The notice may be withdrawn by the person by whom or on whose behalf it was given, on a written request signed by him, or his operation may be made to cease by an order made upon notice on the application of any other person claiming to be interested.

If while the notice continues in force the bank or company receive from the person in whose name the stock is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred, or to pay the dividends thereon, the

(*r*) XXVII Cons. Ord. 1860. See Orders, 17 Nov. 1841, 3 Beav. xxxiii.; and 10 Dec. 1841, 3 Beav. xxxviii.

[(*s*) See Rules of the Supreme Court Ord. 46, superseding the similar Rules of April, 1880.]

bank or company is not by force or in consequence of the service of the notice, authorized without the order of the Court or a judge to refuse to permit the transfer to be made, or to withhold the payment of the dividends, for more than eight days after the date of the request.] The result is, that when the holder of the stock requests a transfer of the stock or payment [ \* 974 ] \* of the dividends, the bank [or company] immediately forwards a notice to the party who served the notice, that unless he bring an action, and obtain and serve an injunction within eight days from the date of such request, the transfer or payment will be made. The party must, of course, be then upon the alert to take proceedings and obtain and serve the injunction before the eight days have expired (*t*).

Distinctions  
between  
remedies  
under the  
4th & 5th  
sections of  
the Act.

10. [Until the issuing of the Order of April, 1880, it was considered that while the 4th section of the Act applied,] not merely to stock in the funds, but to stock and shares of *public companies*, whether incorporated or not, the 5th section was by the joint effect of the schedule to the Act of Parliament and of the orders of Court before referred to (*u*), confined to stock transferable at the *Bank of England*, [but this distinction between cases under the 4th and 5th sections has been superseded, and by the recent Order, rule 3, the notice is applicable to any public company, whether incorporated or not, and may affect shares, securities, and money, as well as stock. The distinction, however, still remains that notice] under the 5th section may be, and is in fact, frequently obtained, not from any fear of immediate danger, but as a general safeguard merely (*v*); whereas a special case must be made in order to obtain a restraining order under the 4th section (*w*).

Both  
remedies  
available in  
the case of  
stock.

11. The [notice in lieu of] *distringas* under the 5th section, and the restraining order under the 4th section, may both occasionally be resorted to should circumstances require it; for the adoption of either remedy is not an election of the one to the exclusion of the other (*x*). "The 4th clause," said Sir J. Wigram, "was intended for interim purposes,—to protect stock until the party claiming it should have an opportunity

[(*t*) The proper course is to obtain an interim order, *ex parte*, over the next motion day, which must be served on the legal owners of the stock; *Re Blaksley's Trusts*, 23 Ch. D. 549.]

[(*u*) See note (*a*), p. 973.]

(*v*) See *Etty v. Bridges*, 1 Y. & C. C. C. 486.

(*w*) Note (*a*), p. 972, *supra*.

(*x*) *Re Marquis of Hertford*, 1 Hare, 584; 1 Ph. 129.

of asserting his rights by bill in the ordinary way,—an opportunity often wanting from the facilities with which that species of property is transferred from hand to hand, and which the common *distringas*, preserved by the 5th section, does not in all cases afford. A *distringas* remains (y) one at the discretion of the bank. The restraining order, which the 4th section enables the Court to grant, is imperative; it continues so long as the Court sees fit to direct, and can only be discharged in the meantime upon the application of the parties interested. \* “Cases might arise,” he added, [ \* 975 ] “in which, from the discovery of new matter, after a *distringas* had issued, or from the bank peremptorily but erroneously refusing to notice a *distringas*, or perhaps from other causes, the party who obtained that writ might, notwithstanding, upon a full disclosure of the facts in a case of merits and urgency, entitle himself to a restraining order under the 4th section” (z).

## SECTION II.

OF PRODUCTION.

1. ALL documents held by the trustee in that character must be produced by him to the *cestuis que trust*, who in equity are the true owners (a). And if the trustee has submitted cases to counsel and taken opinions, not for the purpose of defence in any litigation between himself and his *cestuis que trust*, but for his guidance as trustee, he is bound to produce them to the *cestuis que trust*, who pay the expense so incurred by the trustee (b). [So, in a suit by *cestuis que trust* against their trustees to compel them to make good a breach of trust, the trustees are bound to produce letters and copies of letters between them and their solicitors in relation to the matters in question in the action *ante litem motam* (c).] But as all the *cestuis que trust* have an interest in the documents, they must all be represented, directly or indirectly, in the suit before the docu-

(y) *Sic, qu.* "restrains."

(z) *Re Marquis of Hertford*, 1 Hare, 590.

(a) *Simpson v. Bathurst*, 5 L. R. Ch. App. 202, *per Lord Hatherley*.

(b) *Wynne v. Humberston*, 27 Beav. 421; *Devaynes v. Robinson*, 20 Beav. 42; *Talbot v. Marshfield*, 2 Dr. & Sm. 285, 549.

[(c) *Re Mason*, 22 Ch. D. 609.]

ments can be finally dealt with (*d*). If the trust documents include mortgages upon which the trust fund has been invested, the production cannot be objected to on the ground that the mortgagors, or persons entitled to the equity of redemption, are not parties (*e*).

Trust must  
be estab-  
lished.

2. The privilege of requiring production can be asserted only by a *cestui que trust* when the relationship of trustee and *cestui que trust* has been established; for, so long as the claim is disputed, the would be *cestui que trust* is regarded as a stranger (*f*).

Accounts.

3. An executor and trustee is bound to keep clear and [\* 976] distinct \* accounts, and if he enter the accounts of the trust in his private books, he is bound to produce them (*g*); and if an executor or trustee, being a partner, be allowed to enter the trust accounts in the partnership books, the Court will not allow the partners to withhold the inspection (*h*); but if an agent be employed to manage an estate, and he keeps the accounts in the same books in which the accounts relating to the estates of other persons are kept, the production, in the absence of those other persons, has been refused (*i*).

Privileged  
communica-  
tions.

4. Where litigation is pending or is contemplated between the trustee and his *cestui que trust*, and the trustee submits a case to counsel for his opinion, for the protection of the trustee himself adversely to the *cestui que trust*, the case and opinion are communications within the general rule, and privileged from production (*k*).

Persons  
bound by  
notice of the  
trust.

5. The right of the *cestui que trust* is enforced not only as against the trustee personally, but as against all claiming under him, and though for value, if with notice of the trust (*l*).

(*d*) Bugden v. Tylee, 21 Beav. 545.

(*e*) Gough v. Offley, 5 De G. & Sm. 653.

(*f*) Wyme v. Humberston, 27 Beav. 421.

(*g*) Freeman v. Fairlie, 3 Mer. 43, per Lord Eldon.

(*h*) Ib.

(*i*) Airey v. Hall, 12 Jur. 1043.

(*k*) Talbot v. Marshfield, 2 Dr. & Sm. 285, 549; Brown v. Oakshott, 12 Beav. 252; Devaynes v. Robinson, 20 Beav. 42; Bacon v. Bacon, W. N. 1876, p. 96; [see *Re* Mason, 22 Ch. D. 609; Mayor and Corporation of Bristol v. Cox, 26 Ch. D. 678.]

(*l*) Smith v. Barnes, 1 L. R. Eq. 65.

## SECTION III.

## OF COMPULSORY PAYMENT INTO COURT.

1. THE general rule as laid down by Lord Eldon, and which has ever since been acquiesced in, is, that to call for payment of money into Court, "the plaintiff must either be *solely entitled* to the fund or *have acquired in the whole of the fund such an interest, together with others, as entitles him on his own behalf, and the behalf of those others, to have the fund secured in Court* (m). It is not indispensable that the plaintiff should be the person exclusively interested; for if he have a partial or contingent interest (n), it is enough, provided all the other persons interested in the fund are before the Court (o); and occasionally the Court will make orders for payment into Court, although some of the persons interested in the money are \* not before it (p), [\* 977] or the defendant does not *admit* that all are before it (q). Where the other persons interested are not necessary parties to the suit, payment into Court, if consistent with the relief sought in the suit, may be obtained without service on them of the notice of motion (r); but where *cestuis que trust* had been served with the copy of a bill which prayed the appointment of new trustees, and a transfer of the fund not into Court but *to the new trustees*, the Court held that the parties served with a copy of the bill must be served with notice of the motion to transfer the fund into Court (s).

General rule.

2. If the defendant admits himself to be a trustee for some one, but it remains to be ascertained whether he is a trustee for the plaintiff or for other parties, the plaintiff may move upon his possible title, where all persons are before the Court among whom there will be found some one who is entitled (t). "In a contest

Plaintiff may move upon a possible title.

(m) *Freeman v. Fairlie*, 3 Mer. 29; and see *Dubless v. Flint*, 4 M. & Cr. 502; *M'Hardy v. Hitchcock*, 11 Beav. 77.

(n) *Ross v. Ross*, 12 Beav. 89.

(o) *Whitmarsh v. Robertson*, 4 Beav. 26; *Bartlett v. Bartlett*, 4 Hare, 631.

(p) *Wilton v. Hill*, 2 De G. M. & G. 807; *Hamond v. Walker*, 3 Jur. N. S. 686.

(q) *Symonds v. Jenkins*; 34 L. T. N. S. 277; 24 W. R. 512.

(r) *Marryatt v. Marryatt*, 23 L. J. N. S. Ch. 876.

(s) *Lewellin v. Cobbold*, 1 Sm. & G. 572.

(t) See *Dolder v. Bank of England*, 10 Ves. 355; *Whitmore v. Turquand*, 1 J. & H. 296; but see *Dubless v. Flint*, 4 M. & Cr. 502; *M'Hardy v. Hitchcock*, 11 Beav. 73.

as to the title to any particular property," said Lord Cottenham, "the Court will, in some cases, take possession of the subject-matter of the contest for security until it adjudicates upon the right. Such cases generally arise when the property is in the hands of stakeholders, factors, or trustees who do not themselves claim any title to it. In ordering money into Court under such circumstances, the Court does not disturb the possession of any party claiming title, or direct a payment before the liability to pay is established" (u).

Payment of  
a share.

3. Occasionally, where the fund is clear, and is divisible between the plaintiff and defendant in certain proportions, the Court has ordered the defendant to pay into Court the share only of the plaintiff (v).

Motion  
formerly  
must have  
been founded  
on admis-  
sion de-  
fendant's  
answer.

4. [It was formerly the rule of the Court that where the motion was made before decree the merits upon which it was] founded must be admitted by the defendant's answer, and that no evidence as to merits could be adduced *aliunde* (w)<sup>1</sup>. Thus if money was [\*978] \* standing in the joint names of several persons as of three trustees, it would not be ordered into Court on the admission of the specific sum by one, though the others admitted that a sum was standing in their joint names, and the plaintiff offered to read affidavits sworn by them from which the amount of the sum would appear (x). [But in a recent case (y) the Court of Appeal intimated an opinion that any admission, whether direct or implied, would be sufficient to enable the Court to act; and in a subsequent case, where a motion was made in an administration action, after the defendant's appearance but before any pleadings had been delivered, for payment into Court of sums of money alleged to

[But now  
any admis-  
sion direct or  
implied  
sufficient.]

(u) *Richardson v. Bank of England*, 4 M. & Cr. 171.

(v) *Rogers v. Rogers*, 1 Anst. 174; *Hamond v. Walker*, 3 Jur. N. S. 686; see *Score v. Ford*, 7 Beav. 336.

(w) *Beaumont v. Meredith*, 3 V. & B. 181, *per* Lord Eldon; *Richardson v. Bank of England*, 4 M. & Cr. 171, 175, *per* Lord Cottenham; *Dubless v. Flint*, 4 M. & Cr. 502; *Black v. Creighton*, 2 Moll. 554, *per* Sir A. Hart; and see *Green v. Pledger*, 3 Hare, 171; *Hagell v. Currie*, 2 L. R. Ch. App. 452. [However in *Jervis v. White*, 6 Ves. 738, Lord Eldon took the affidavit of the plaintiff charging the defendant with having a sum of money in his hands and an affidavit of the defendant before answer together as an admission, and ordered the money into Court.] The 59th sect. of 15 & 16 Vict. c. 86, directing the defendant's answer to be viewed merely as an affidavit in motions for injunction or receiver, &c., did not touch motions for payment into Court.

(x) *Boschetti v. Power*, 8 Beav. 98.

(y) *London Syndicate v. Lord*, 8 Ch. D. 84.]

<sup>1</sup> *M'Tighe v. Dean*, 7 C. Green, 81.

be in the defendant's hands, and the motion was supported by the affidavit of the plaintiff, but the defendant though served with notice of the motion did not appear, it was held by the late M. R. that the defendant must be taken to have admitted that he had received the money as he had not denied it, and he was ordered to pay the amount into Court (y); and admissions by a trustee in correspondence that he has received the money, and a recital to that effect in the settlement which was executed by him, are sufficient to found the order (z).]

5. And it would seem that [the old rule was that] not only must the plaintiff have been able to read from the answer an admission of the defendant's receipt of the money, but also an admission of his own title, or probable title, *c. g.* as next of kin, heir-at-law, &c., and that if the defendant ignored the plaintiff's title, the money would not have been ordered into Court (a). But in a suit to establish a constructive trust, the rights of the plaintiff might have appeared so clear upon the answer, that the Court, notwithstanding a formal denial by the defendant that he was a trustee, would have felt itself justified in ordering payment (b). [It is conceived that under the present practice any admission by the defendant of the plaintiff's title, whether expressed or implied \* from his conduct, would be sufficient [ \* 979 ] to enable the Court to order money into Court (c).]

Old rule that answer should contain an admission of plaintiff's title.

[Present practice.]

6. Where the motion is made after decree the Court will order money into Court in any case where it is ascertained to its satisfaction, that the amount must in any event be ultimately payable by the defendant, and if the certificate of the chief clerk has not been made finding the amount due, the Court will in a proper case satisfy itself by an examination of the evidence as to the amount, and order payment of the amount so ascertained (d).]

[Payment in after decree.]

7. The plaintiff cannot ask for payment of money into Court upon the footing of an equity not alleged by

Payment into Court must be upon the

[(y) *Freeman v. Cox*, 8 Ch. D. 148. In a recent case in Ireland *V. C. Chatterton* declined to follow *Freeman v. Cox*; see *Nesbitt v. Baldwin*, 7 L. R. Ir. 134.]

[(z) *Hampden v. Wallis*, 27 Ch. D. 251.]

(a) *Dubless v. Flint*, 4 M. & Cr. 502; *M'Hardy v. Hitchcock*, 11 Beav. 73; *Bank of Turkey v. Ottoman Company*, 2 L. R. Eq. 366.

(b) *Hagell v. Currie*, 2 L. R. Ch. App. 452, *per* L. J. Cairns.

[(c) See *Freeman v. Cox*, 8 Ch. D. 148; but see *Nesbitt v. Baldwin*, 7 L. R. Ir. 134.]

[(d) *London Syndicate v. Lord*, 8 Ch. D. 84.]

footing of an equity alleged by the plaintiff.

him in his pleadings, but only stated by the answer [or statement of defence.] Thus, where the plaintiff filed a bill claiming one-fifth of the residuary estate of a testator and asking relief as in the case of an open account, and the defendant by his answer stated a deed amounting to a settlement of account under which he admitted a sum to be due from him, it was held that the plaintiff could not without amending his bill obtain payment into Court of the sum so admitted to be due (*e*).

Not necessary that fund should be actually in defendant's hands.

8. It is not necessary that the defendant should acknowledge the fund to be in his hands at the time of the answer; for if he admit that he once actually received it, and state that he afterwards applied it in a way not authorized by the trust, the Court will fasten upon the receipt, and not allow him to discharge himself by pleading a breach of duty; as, if a trustee admit that he once had a fund in his hands, but that he afterwards allowed it to be received by a co-trustee who misapplied it (*f*), or that he afterwards sold it out and did not re-invest it (*g*), or paid it away improperly (*h*), or lent it on personal (*i*) or other security (*k*), not within the terms of the trust. And no attention will be paid to the objection that the suit is for the very purpose of securing the fund, and therefore that the money ought not to be ordered into Court until decree (*l*).

Payment not mentioned in answer may be verified by affidavit.

[ \*980 ] \*9. But if an executor (and the rule must apply equally to a trustee) admits in his answer [or statement of defence] that he has received a specific sum, but adds that he has made payments, the amount whereof he does not specify, in respect of the testator's estate, the Court will allow him to verify by affidavit the amount of the payments properly made, and will order him to pay in the actual balance (*m*).

10. Payment of money into Court is, in general, con-

(*e*) *Proudfoot v. Hume*, 4 Beav. 476.

(*f*) *Ingle v. Partridge*, 32 Beav. 661; *Symonds v. Jenkins*, 34 L. T. N. S. 277; 24 W. R. 512.

(*g*) *Wiglesworth v. Wiglesworth*, 16 Beav. 272; *Phillipo v. Munnings*, 2 M. & Cr. 309; and see *Meyer v. Montriou*, 4 Beav. 346; *Futter v. Jackson*, 6 Beav. 424.

(*h*) See *Scott v. Becher*, 4 Price, 350; *Meyer v. Montriou*, 4 Beav. 343; *Nokes v. Seppings*, 2 Ph. 19.

(*i*) *Vigrass v. Binfield*, 3 Mad. 62; *Collis v. Collis*, 2 Sim. 365; *Roy v. Gibbon*, 4 Hare, 65.

(*k*) *Wyatt v. Sharratt*, 3 Beav. 498; *Costeker v. Horrox*, 3 Y. & C. 530; *Hinde v. Blake*, 4 Beav. 597; *Bourne v. Mole*, 8 Beav. 177.

(*l*) See *Rothwell v. Rothwell*, 2 S. & S. 217; *Wyatt v. Sharratt*, 3 Beav. 498; *Collis v. Collis*, 2 Sim. 365.

(*m*) *Anon.* 4 Sim. 359; and see *Proudfoot v. Hume*, 4 Beav. 476; *Roy v. Gibbon*, 4 Hare, 65.



fined to the cases of a defendant's admission of actual possession of the fund, or of a receipt not followed by any subsequent legal discharge, and is not ordered upon a mere admission of facts from which a liability may be inferred (*n*). Thus, if a defendant admit that he has had a fund in his hands from a certain time, and it clearly appears that he is liable and will be decreed at the hearing to pay interest; yet the Court will not order him to pay interest on motion (*o*), unless he also admit that he has actually made interest, which amounts to a receipt (*p*).

Payment of money into Court not ordered on a mere admission of circumstances showing a liability.

11. The case of *Rothwell v. Rothwell* (*q*) is no exception to this rule, for there the defendant had covenanted with the trustees of his marriage settlement to pay 850*l.* within twelve months from the marriage; and the covenant not having been performed, the children filed a bill against the covenantor and the trustees to have the money raised; and the defendant admitting "that the 850*l.* had not been got in, but that *it was still in his hands*," the Court ordered the payment into Court, not on the admission of the debt, but "that *it was still in his hands*."

*Rothwell v. Rothwell.*

12. However, in some cases the Court orders payment into Court upon motion of what is apparently a mere debt; as, where an executor or trustee admits himself to owe a debt to the estate he represents, for here the person to pay and the person to receive being the same, the Court assumes that what ought to have been done has been done, and orders the payment, not as of a debt by a debtor, but as of monies realised in hands of the executor or trustee (*r*). Thus, where A., B. and C. were appointed *executors* of a will, of whom A. and C. alone proved, and A. and B. were appointed *trustees*, and a bill was filed by A. for the administration of the trusts of the will, and B. by his answer admitted that he and his partner G. B. were indebted to the testatrix at the time of her decease, and that part of the assets had been lent to the partnership by C., and that the sum of 1137*l.* 7*s.* 10½*d.* was due from the partnership to the estate on the balance of

Special cases of a trustee who is a debtor to his trust estate.

(*n*) See *Richardson v. Bank of England*, 4 M. & Cr. 174; *Peacham v. Daw*, 6 Mad. 98.

(*o*) *Wood v. Downes*, 1 V. & B. 50.

(*p*) *Freeman v. Fairlie*, 3 Mer. 43; see *Wood v. Downes*, 1 V. & B. 50.

(*q*) 2 S. & S. 217; see *Richardson v. Bank of England*, 4 M. & Cr. 174.

(*r*) *Richardson v. Bank of England*, 4 M. & Cr. 174, *per* Lord Cottenham.

accounts, and that the debt owing from the partnership, and the monies received from C. the executor, had been treated as part of the assets, and applied partly in payment of testatrix's debts, and as to the residue upon the trusts of the will, the Court held, notwithstanding B.'s disclaimer of having acted, that he must be deemed to have acted as executor and trustee, and as such to have received the monies in question, and ordered him to pay the balance into Court (s).

Where

trustees mean  
to apply the  
fund.

13. Trustees will not be ordered to pay into Court where they have a discretionary power over the fund, and it appears that they are intending *bona fide* to exercise it; for this would only lead to expense by occasioning the necessity of another application to have the fund paid out again (t).

Whether the  
order is  
matter of  
course.

14. Lord Langdale once said, that according to the old practice it was mere matter of course to order trust funds into Court, but that the question now was whether there existed any sufficient ground for the order, such as danger of the fund, &c. (u). V. C. Stuart subsequently declared his adherence to the old practice (v); [but in a recent case V. C. Hall was of opinion that the rule was not absolute, but a reasonable ground for the payment must be made out (w)].

Payment  
into Court at  
the hearing.

15. The Court will occasionally make an order for payment into Court at the hearing of the cause, "*ex debito justitiæ*," though it might have hesitated to do so upon an interlocutory application by motion; as, where a plaintiff having only a remote contingent interest in a fund claims at the hearing to have the fund brought into Court (x). And an order for payment into Court will be made at the hearing, if proper, without any notice of motion for that purpose (y).

Time allowed  
for payment  
into Court.

16. The time to be given for payment of money into Court will depend on the circumstances of the case. If it be money in the defendant's hands, it will be ordered in forthwith, and an immediate transfer may be directed [ \* 982 ] of stock standing in the defendant's \* name. Where the defendant had improperly lent a sum on personal security, but no insolvency was suggested nor any danger as to the money, the Court ordered it to be paid in, on or before, the first day of the following

(s) *White v. Barton*, 18 Beav. 192.

(t) *Talbot v. Marsfield*, 2 Dr. & Sm. 285.

(u) *Ross v. Ross*, 12 Beav. 89.

(v) *Robertson v. Scott*, 14 L. T. N. S. 187.

[(w) *Re Braithwaite*, 21 Ch. D. 121.]

(x) *Governesses Institution v. Rusbridger*, 18 Beav. 467.

(y) *Isaacs v. Weatherstone*, 10 Hare, App. xxx.

term (z). In another case, where the defendant had lent 820*l.* upon a mortgage not authorized by the trust, the Court allowed six weeks, with liberty to apply for further time if the circumstances should then warrant the indulgence (a).

17. Where a [notice in lieu of] *distringas* or injunction has been previously obtained against the transfer of the stock, the Court orders the transfer into Court to be made, "notwithstanding the notice or injunction."

## SECTION IV.

### OF RECEIVERSHIP.

1. As the *cestuis que trust* or parties beneficially interested in an estate are in equity the owners of it, should they concur in an application for a receiver and the trustee consents, the Court will at any time make the order (b). But the usual recognisances will not be dispensed with (c).

Receiver will be appointed at the instance of all the *cestuis que trust*.

2. And as each *cestui que trust* is entitled to have the fund properly protected, a receiver will be granted at his instance if it can be shown that the trustee has been guilty of misconduct, waste, or improper disposition of the trust estate (d)<sup>1</sup>, or that he has an undue leaning or bias towards one of two conflicting parties (e), or that the fund is in danger from his being

Also where trustee is guilty of misconduct, or is insolvent, bankrupt, &c.

(z) *Vigrass v. Binfield*, 3 Mad. 62; and see *Hinde v. Blake*, 4 Beav. 597; *Roy v. Gibbon*, 4 Hare, 65.

(a) *Wyatt v. Sharratt*, 3 Beav. 498; *Score v. Ford*, 7 Beav. 333.

(b) *Brodie v. Barry*, 3 Mer. 695; *Beaumont v. Beaumont*, cited Ib. 696; see *Browell v. Reed*, 1 Hare, 435.

(c) *Manners v. Furze*, 11 Beav. 30; *Tylee v. Tylee*, 17 Beav. 583.

(d) *Anon.* 12 Ves. 5 *per* Sir W. Grant; and see *Middleton v. Dodswell*, 13 Ves. 266; *Howard v. Papera*, 1 Mad. 142; *Richards v. Perkins*, 3 Y. & C. 249; *Evans v. Coventry*, 5 De G. M. & G. 911.

(e) *Earl Talbot v. Scott*, 4 K. & J. 139.

<sup>1</sup> If proceedings are instituted to secure the removal of the trustee, the *cestuis que trust* are entitled to the appointment of a receiver for the estate, since the trustee has a right to answer their complaint and to have a regular and full hearing thereon, and as it is necessary in the time which must elapse before this can take place, that the fund be properly protected; *Beierly v. Brooke*, 4 Gratt, 208; *Edie v. Applegate*, 14 Io. 273.

in insolvent circumstances (*f*), or being a bankrupt (*g*), or that one trustee has misconducted himself, the other [ \* 983 ] consenting to the order (*h*), or that he is \*incapacitated from acting (*i*), or that the executor is a person of bad character, drunken habits, and great poverty (*k*). [And a receiver will be appointed against an executor in a creditors' action, if there is any danger of his paying any creditor in full, and the application for a receiver in such a case may be made *ex parte* immediately upon the issuing of the writ (*l*).

Where executrix a *feme covert*, and husband abroad.

3. And a receiver was appointed [in a case under the old law] where the executrix was a *feme covert*, and the husband, besides being in indifferent circumstances, was out of the jurisdiction, for in such a case, said the Court, if the executrix waste the assets or refuse payment, the party aggrieved has no remedy, as the husband must be joined in the action (*m*). [But now that the husband is not a necessary party to an action against the executors, and is not subject to liabilities by reason of any devastavit committed by his wife unless he has acted or intermeddled in the administration, it is conceived that his poverty or absence would be no ground for the appointment of a receiver (*n*).]

Receiver where trust estate unprotected.

4. And a receiver has been ordered where four trustees had been named in a will and one died, and another was abroad, and the third had scarcely interfered in the trust, and, the fourth submitted to a receiver by his answer (*o*). In another case three trustees had *disagreed*, and a receiver was appointed (*p*): the order was taken by arrangement between the parties, but the Court had previously expressed its opinion that, unless the trustees could agree, a receiver *must* be appointed (*q*). Where two out of three trustees chose to act separately, and took securities in their own names omitting that of the dissentient trustee, a *cestui que trust* was held en-

(*f*) *Scott v. Becher*, 4 Price, 346; *Mansfield v. Shaw*, 3 Mad. 100; and see *Anon.* 12 Ves. 4; *Middleton v. Dodswell*, 13 Ves. 266; *Havers v. Havers*, Barn. 23.

(*g*) *Gladdon v. Stoneman*, 1 Mad. 143, note; *Langley v. Hawk*, 5 Mad. 46; [*Re Hopkins*, 19 Ch. D. 61.]

(*h*) *Middleton v. Dodswell*, 13 Ves. 266.

(*i*) *Bainbrigge v. Blair*, 3 Beav. 421.

(*k*) *Everett v. Prythergh*, 12 Sim. 367, 368.

[(*l*) *Re Radcliffe*, deceased, 7 Ch. D. 733.]

(*m*) *Taylor v. Allen*, 2 Atk. 213.

[(*n*) 45 & 46 Vict. 75, ss. 18, 24.]

(*o*) *Tidd v. Lister*, 5 Mad. 429.

(*p*) *Day v. Croft*, May 2, 1839, M. R.

(*q*) See now *Hart v. Denham*, W. N. 1871, p. 2.

titled to a receiver (*r*). And the Court will grant a receiver at the instance of the *cestui que trust*, when the single trustee is, or all the trustees are out of the jurisdiction (*s*).

5. But the Court is not in the habit of granting a receiver, and so taking the administration out of the hands of the trustees, the natural curators of the estate, upon very slight grounds (*t*)<sup>1</sup>. Thus it is no sufficient cause for a receiver that one of several trustees \* has *disclaimed* (*u*), or is *inactive*, or [ \* 984 ] *gone abroad* (*v*). Nor is it a sufficient cause that trustees are in *mean* (not insolvent) circumstances (*w*), or being trustees for sale have let the purchaser into possession before they receive the purchase money, for the Court will not *necessarily* infer this to be misconduct (*x*).

6. When a receiver is appointed under the authority of the Court, he is appointed for the benefit of all parties interested, and therefore will not be discharged merely on the application of the party at whose instance the order was made (*y*).

7. However, when a receiver had been appointed on the application of the plaintiff the tenant for life, on the ground of the misconduct of one of the trustees, and the incapacity of the other, and afterwards three new trustees were appointed by the Court, who, on a motion by the plaintiff to discharge the receiver, undertook to receive the rents and pass their accounts half-yearly before the Master in the same way as a receiver, the Court said it was not proposed to deprive any party of the protection of a receiver, but merely to substitute the trustees in his place; that the tenant for life ought not unnecessarily to be charged with the costs of a receiver;

(*r*) *Swale v. Swale*, 22 Beav. 584.

(*s*) *Noad v. Backhouse*, 2 Y. & C. C. 529; *Smith v. Smith*, 10 Hare, App. lxxi.

(*t*) See *Middleton v. Dodswell*, 13 Ves. 268; *Barkley v. Lord Reay*, 2 Hare, 306.

(*u*) *Browell v. Reed*, 1 Hare, 434; but see *Tait v. Jenkins*, 1 Y. & C. C. 492.

(*v*) *Browell v. Reed*, 1 Hare, 435, *per* Sir J. Wigram.

(*w*) *Anon. case*, 12 Ves. 4; *Howard v. Papera*, 1 Mad. 142; and see *Hathornthwaite v. Russel*, 2 Atk. 126. In *Havers v. Havers*, Barn. 23, the Court considered misapplication probable.

(*x*) *Browell v. Reed*, 1 Hare, 434.

(*y*) *Bainbridge v. Blair*, 3 Beav. 423, *per* Lord Langdale.

<sup>1</sup> *Ogden v. Kip*, 6 Johns. Ch. 160. There must be good reason to fear that the property will not be forthcoming at the end of the litigation, or no receiver will be appointed. *Poythress v. Poythress*, 16 Ga. 406; *Ogden v. Kip*, 6 Johns. Ch. 160.

that it was not intended to put the tenant for life in possession; that if any objections were shown to the trustees the application would be refused, but in the absence of such objections it was a reasonable request; and the order for discharging the receiver was made (z).

Expense of receiver falls on life estate.

[Receiver's priority for his costs and remuneration.]

8. Where the Court appoints a receiver, the poundage and the expenses of passing his accounts fall upon the income of the tenant for life (a).

[9. Where property was realized in an action by debenture-holders against their trustees to execute the trusts of the deed for securing the debentures, and a receiver and manager had also been appointed in the action, the receiver and manager was allowed the balance due to him, including his remuneration and his costs of the action, in priority to the costs, charges, and expenses of the trustees, and the costs of the plaintiffs other than the plaintiffs' costs of the realization of the property (b).]

[ \* 985 ]

## \* SECTION V.

### OF COSTS OF SUIT.

Costs as between trustees and strangers.

I. *As between strangers on the one hand, and trustees and cestuis que trust on the other.*

1. In these cases, the trustee is on no better footing than any ordinary plaintiff or defendant, for the circumstances of the trust cannot be allowed to affect the interest of a third person (c). Thus, if a trustee fail in his application to the Court, he must pay the costs of it (d).

Costs where trustees cannot make a title.

2. So, in a suit by a stranger for specific performance of a contract, the vendor trustee for sale must, if he cannot make a title, pay the costs of the suit agreeably to the general rule (e).

Trustee made a defendant as a necessary party.

3. So, where trustees or executors are brought before the Court as necessary parties by a stranger, if the trustees or executors contest the claims of the plaintiff,

(z) *Bainbrigg v. Blair*, 3 Beav. 421, 423, 424; and see *Poole v. Franks*, 1 Moll. 80.

(a) *Shore v. Shore*, 4 Drew. 510.

[(b) *Batten v. Wedgwood Coal and Iron Company*, 28 Ch. D. 317.]

(c) *Burgess v. Wheate*, 1 Eden, 251, *per* Lord Northington.

(d) *Ex parte Angerstein*, 9 L. R. Ch. App. 479; [*Pitts v. La Fontaine*, 6 App. Cas. 482.]

(e) *Edwards v. Harvey*, G. Coop. 40; and see *Hill v. Magan*, 2 Moll. 460; *Else v. Lutyens*, 8 Hare, 164.

and the plaintiff recover in the suit, they are not entitled to the costs (*f*).

4. If a plaintiff *fail* in his suit, but stands in so hard a case that he ought not to *pay* any costs, the Court will not oblige him to pay the costs of a defendant because the latter happens to sustain the character of a trustee (*g*).

Plaintiff failing in his suit not necessarily bound to pay costs of a trustee.

5. In a foreclosure action against the mortgagor and his trustee to bar dower, the trustee is not entitled to his costs as against the mortgagee (*h*).

Trustee to bar dower.

6. Where an action by a stranger is dismissed with costs, a trustee, who is a defendant, will not, as is usual between trustee and *cestui que trust*, be ordered his costs as between solicitor and client, but only as between party and party (*i*)<sup>1</sup>.

Trustee has costs as between party and party only.

7. Where money has been paid into Court by a Railway Company, and the *cestuis que trust* are petitioners and the trustee a respondent, the company must pay the costs of both, as the trustee \* is justified [ \* 986 ] in appearing separately to inform the Court that the order is right (*k*).

Trustee respondent to petition of *cestui que trust*.

8. If a creditor filed a bill against an executor for payment of a debt, the rule which [until the recent alteration in the practice of the Court] prevailed at law was not also the rule of equity, viz : that if the creditor recovered he should be entitled to his costs, *de bonis testatoris*, and if there were none, then *de bonis propriis* of the executor ; for the consideration of costs in equity rested entirely in the discretion of the Court (*l*).

Costs in creditor's suit.

As the law formerly stood, if the assets were not sufficient to cover both the plaintiff's debt and costs, the executor was not decreed in equity to pay costs personally (*m*), unless he had misconducted himself, as by having satisfied simple contract debts in preference to the plaintiff.

Executor (though not so formerly) now held entitled to his costs in preference to the plaintiff.

(*f*) *Rashley v. Masters*, 1 Ves. jun. 201, see 205.

(*g*) *Browdie v. St. Paul*, 1 Ves. jun. 326, see 334.

(*h*) *Horrocks v. Ledsam*, 2 Coll. 208.

(*i*) *Mohun v. Mohun*, 1 Sw. 201; *Saunders v. Saunders*, 3 Jur. N. S. 727.

(*k*) *Ex parte Metropolitan Railway Company*, 16 W. R. 996.

(*l*) *Twisleton v. Thelwel*, Hard. 165; *Uvedale v. Uvedale*, 3 Atk. 119; but see *Davy v. Seys*, Mos. 204. [Now by Rules of the Supreme Court, 1883, Order 65, R. 1, the costs of and incident to all proceedings in the Supreme Court are in the discretion of the Court.]

(*m*) *Twisleton v. Thelwel*, Hard. 165; *Morony v. Vincent*, 2 Moll. 461.

<sup>1</sup> *Ralston v. Telfair*, 2 Dev. & Bat. 414; *McKein v. Handy*, 4 Md. Ch. 234.

debts upon specialty (*n*); but he was not entitled to retain his own costs out of the assets in preference to the claims of the plaintiff (*o*). And if a bill had been filed by a specialty creditor, and the specialty debt had exhausted the personal assets, the executor could not have claimed to be reimbursed out of the real estate to the prejudice of the testator's heir (*p*); for the executor, it was said, should have considered the risk before he applied for the probate (*q*). But now the practice is that the executor shall have his own costs in the first place, even as against the plaintiff, for the Court will not take the fund out of his hands until his costs are paid (*r*).

II. *Of costs as between trustees and cestuis que trust, inter se.*

Trustee entitled to costs as a general rule.

1. The general rule is that a trustee shall have his costs of suit awarded to him at the hearing either out of the trust estate, or to be paid by his *cestui que* [\* 987] *trust* (*s*)<sup>1</sup>. And if there be a fund under \* the control of the Court he will have his costs as between solicitor and client (*t*). And if there be no fund, still

(*n*) *Jefferies v. Harrison*, 1 Atk. 468; and see *Bennett v. Attkins*, 1 Y. & C. 247; *Wilkins v. Hunt*, 2 Atk. 151.

(*o*) *Humphrey v. Morse*, 2 Atk. 408; *Sandys v. Watson*, 2 Atk. 80; and see *Adair v. Shaw*, 1 Sch. & Lef. 280.

(*p*) *Uvedale v. Uvedale*, 3 Atk. 119; and see *Nash v. Dillon*, 1 Moll. 237.

(*q*) See *Uvedale v. Uvedale*, 3 Atk. 119; *Humphrey v. Morse*, 2 Atk. 408.

(*r*) *Bennet v. Going*, 1 Moll. 529; *Tipping v. Power*, 1 Hare, 405; *Ottley v. Gilby*, 8 Beav. 603; *Tanner v. Dunccey*, 9 Beav. 339.

(*s*) 1 Eq. Ca. Ab. 125, note (*a*); *Hall v. Hallet*, 1 Cox, 141, *per* Lord Thurlow; *Attorney-General v. City of London*, 3 B. C. C. 171; *Norris v. Norris*, 1 Cox, 183; *Sammes v. Rickman*, 2 Ves. jun. 38, *per* Lord Chief Baron Eyre; *Rushley v. Masters*, 1 Ves. jun. 201; *Rocke v. Hart*, 11 Ves. 58; *Maplett v. Pocock*, Rep. t. Finch, 136; *Landen v. Green*, Barn. 389; *Taylor v. Glanville*, 3 Mad. 176, &c.; [*Re Love*, W. N. 1885, p. 58; now reported in 29 Ch. D. 348. By Order 65, R. 1. of the Rules of the Supreme Court, 1883, the costs of all proceedings, including the administration of estates and trusts, are in the discretion of the Court, but this is not to deprive an executor, administrator, trustee or mortgagee, who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules previously acted upon in the Chancery Division; see *Re Hodgson*, W. N. 1884, p. 117, where the action had been instituted before the order came into operation.] *Re McClellan*, 29 Ch. D. 495.

(*t*) *Mohun v. Mohun*, 1 Sw. 201, *per* Sir T. Plumer; *Moore v. Frowd*, 3 M. & Cr. 49, *per* Lord Cottenham.

<sup>1</sup> *McKim v. Handy*, 4 Md. Ch. 234; *Day v. Day*, 2 Green Ch. 549; *Scott's Est.* 9 W. & S. 98; *Bendall v. Bendall*, 24 Ala. 295.



if the *cestuis que trust* choose to bring the trustees before the Court for obtaining its directions as to the rights of the parties or the mode of administration, and the trustee are free from blame, the trustees are entitled to their costs as between solicitor and client as against the *cestuis que trust personally* (u)<sup>1</sup> But if plaintiffs take proceedings for the purpose of creating a fund, of which the defendants would be trustees for plaintiffs, if plaintiffs succeeded, but the plaintiffs fail, the defendants are entitled as against the plaintiffs to costs only as between party and party (v)<sup>2</sup>.

2. If it appear upon the pleadings, or the Court be otherwise satisfied, that the trustee has sustained charges and expenses beyond the costs of suit, the Court will order him his *costs, charges and expenses, properly incurred*. But an order made in a suit in this form will not comprise costs, charges and expenses, incurred in defending other suits, unless they be specially mentioned (w).

[3. If the trust estate be insufficient for the payment of all the costs of the action, the trustee is entitled to have his costs, charges and expenses, paid in priority to the costs of the *cestuis que trust* (x). But the costs of realizing the trust estate will have priority over the trustees' costs, charges and expenses, as will also the costs and remuneration of a receiver appointed in the suit (y).] [Priority.]

4. If the trustee be a *solicitor*, he cannot make the usual professional charges, but the Court will not *de-clare* that the trustee shall have his *costs out of pocket* only, but will give him his costs as between solicitor and client in the usual way, and leave it to the taxing officer to deal with the effect of the order (z).

5. A singular application of the rules respecting costs as between trustees and third persons, and as between trustees and their *cestuis que trust inter se*, arises in the case of a deficient fund. If a creditor \*bring an action for administration and there [ \* 988 ] Practice in creditors' and legatees' suits where fund is deficient.

(u) *Attorney-General v. Cuming*, 2 Y. & C. C. C. 155; but see *Edenborough v. Archbishop of Canterbury*, 2 Russ. 112.

(v) *Saunders v. Saunders*, 3 Jur. N. S. 727; *Mohun v. Mohun*, 1 Sw. 201.

(w) *Payne v. Little*, 27 Beav. 83.

[(x) *Dodds v. Tuke*, 25 Ch. D. 617.]

[(y) *Batten v. Wedgwood Coal and Iron Company*, 28 Ch. D. 317.]

(z) *York v. Brown*, 1 Coll. 260.

<sup>1</sup> *Downing v. Marshall*, 37 N. Y. 380.

<sup>2</sup> *Gaylords v. Kelshaw*, 1 Wallace 81.

is a surplus, he can only have costs as between party and party, for that is all that he is entitled to as against the residuary legatees with whom he has no privity; but if the estate be deficient, and is divisible amongst the creditors *pro rata*, the creditor is regarded in the light of a trustee for himself and the other creditors, and then as between him and his co-creditors he is allowed his costs as between solicitor and client. Thus the less the estate the larger the plaintiff's costs. The same principle applies, *mutatis mutandis*, to a suit by a legatee where the fund, after payment of debts, is sufficient for discharge of the legacies in full (a); but otherwise if the fund be insufficient for payment of debts (b). Where the personalty had been exhausted, and a creditors' suit was instituted against the devisees of the real estate, which was also likely to prove deficient, the order was that the proceeds should be applied first in payment of the costs of plaintiffs and defendants as between party and party *pari passu*, and then in discharge of the debts, and if the fund were insufficient for the latter purpose, then as between the plaintiffs and the other creditors the plaintiffs should be paid their extra costs as between solicitor and client (c).

Trustee not  
appearing.

6. Where the trustee did not appear at the hearing, and a decree *nisi* was made against him, and the trustee set down the cause again, and prayed to have his costs of the suit upon his paying the costs of the day, Lord Kenyon said, "The payment of the costs of the day makes the trustee *rectum in curiâ*; and as he would most unquestionably have been entitled to his costs if he had appeared at the original hearing, so he now stands in the same situation, and is therefore entitled to his costs" (d).

Decree  
passed.

7. But if the decree has been *passed*, a trustee who has omitted to ask for his costs at the hearing cannot have the cause re-heard upon the subject of costs only, and cannot obtain an order for payment of his costs upon presenting a petition (e).

Disclaimer.

8. If a person named as trustee be made defendant to a suit, and by his defence disclaim the trust, the suit

(a) *Thomas v. Jones*, 1 Dr. & Sm. 134, and cases there cited; and see *Tardrew v. Howell*, 2 Giff. 530.

(b) *Weston v. Clowes*, 15 Sim. 610; *Newman v. Hatch*, Set. on Dec. p. 875, 4th ed.; *Wettenhall v. Davis*, 9 Jur. N. S. 1216; *S. C. nom. Wetenhall v. Dennis*, 33 Beav. 285.

(c) *Henderson v. Dodds*, 2 L. R. Eq. 532.

(d) *Norris v. Norris*, 1 Cox, 183.

(e) *Colman v. Sarrell*, 2 Cox, 206.

will be dismissed as against him with costs (*f*); but not with costs as between solicitor and client, for, having refused to accept the office, he stands in the \*position of an ordinary defendant (*g*); and [\* 989] if his defence be unnecessarily long, he will only be allowed the reasonable costs of a disclaimer (*h*).

9. If a person be a trustee of a deed void as against creditors, or on other grounds, the plaintiff by praying a conveyance by the trustee may elect to treat him in that character, so as to give him a claim to costs (*i*). Otherwise the so-called trustee is a trustee of a nullity, and he and his *cestui que trust* cannot have costs as against the true owner (*k*); more particularly if the deed to which the trustee is a party contain a false recital for the purpose only of misleading (*l*); and if the trustee's claim to the expenses of the so-called trust be the occasion of the suit, he will be ordered to pay costs (*m*). [So, where the trustee had prepared the settlement and had persuaded the settlor to execute it, he was ordered to pay the costs of the action to set it aside (*n*).] If a suit be instituted against trustees of an instrument, which is a nullity, for enforcing the void trusts, and the suit is dismissed, the *quasi* trustees will have their costs, but only as between party and party (*o*).

Costs of trustee of a void deed.

10. If any particular instance of misconduct, or a general dereliction of duty in the trustee (*p*),<sup>1</sup> or even

Suit originated by the trustee's misconduct.

(*f*) *Hickman v. Fitzgerald*, 1 Moll. 14.

(*g*) *Norway v. Norway*, 2 M. & K. 278, overruling *Sherratt v. Bentley*, 1 R. & M. 655.

(*h*) *Martin v. Persse*, 1 Moll. 146.

(*i*) *Snow v. Hole*, V. C. of England, March 8, 1845; and see *Goldsmith v. Russell*, 5 De G. M. & G. 547, 556; *Daking v. Whimper*, 26 Beav. 571; *Ponsford v. Widnell*, W. N. 1869, p. 81; *Travis v. Illingworth*, W. N. 1868, p. 206; *Ex parte Tomlinson*, 3 De G. F. & J. 745; and see *ante*, p. 640.

(*k*) *Elsey v. Cox*, 26 Beav. 95; *Crossley v. Elworthy*, 12 L. R. Eq. 158.

(*l*) *Turquand v. Knight*, 14 Sim. 643.

(*m*) *Smith v. Dresser*, 1 L. R. Eq. 651; S. C. 35 Beav. 378.

(*n*) *Dutton v. Thompson*, 23 Ch. D. 278.]

(*o*) *Mohun v. Mohun*, 1 Sw. 201.

(*p*) *Springett v. Dashwood*, 2 Giff. 521; *Byrne v. Norcott*, 13 Beav. 346; *Attorney-General v. Hobart*, Rep. t. Finch, 259; *Earl Powlet v. Herbert*, 1 Ves. jun. 297; *Caffrey v. Darby*, 6 Ves. 488; *Littlehales v. Gascoyne*, 3 B. C. C. 73; *Ashburnham v. Thompson*, 13 Ves. 402; *Hide v. Haywood*, 2 Atk. 126; *Adams v. Clifton*, 1 Russ. 297; *Mosley v. Ward*, 11 Ves. 581; *Piety v. Stace*, 4 Ves. 620; *Seers v. Hind*, 1 Ves. jun. 294; *Fell v. Lutwidge*, Barn. 319, see 322; *Brown v. How*, Barn. 354, see 358; *Sheppard v. Smith*, 2 B. P. C. 372; *Haberdashers' Company v. Attorney-*

<sup>1</sup> *Lathrop v. Smalley*, 23 N. J. Eq. 192.

his mere caprice and obstinacy (*q*),<sup>1</sup> be the immediate [\* 990] cause why the suit was instituted, \* the trustee, on the charge being substantiated against him, must pay the costs of the proceedings which his own improper behaviour occasioned; and of course if the trustee be decreed to pay the costs personally, he cannot afterwards deduct them from the trust fund in his hands (*r*). [So, if an executor or trustee improperly institute an action to administer the estate or execute the trust, the Court will not allow its process to be used as an instrument of oppression, but will make the plaintiff personally bear all the costs of the action (*s*); and under the new rules, if an administration action be rendered necessary solely by the neglect of the trustee to furnish accounts, the decree should be so framed as to enable the Court to throw the whole costs of the action on the trustee (*t*). But the right of a trustee to his costs rests substantially upon contract, and can only be lost or curtailed by such inequitable conduct as amounts to a violation or culpable neglect of his duty under the contract (*u*), and his costs accordingly are not "by law left to the discretion of the Court;" and a trustee, if deprived of his costs, may, without the leave of the Court or judge making the order, appeal on the question of his costs only (*v*). Where, however, the

General, 2 B. P. C. 370; *Franklin v. Frith*, 3 B. C. C. 433; *Whistler v. Newman*, 4 Ves. 129; *Stacpoole v. Stacpoole*, 4 Dow. 209; *Crackelt v. Bethune*, 1 J. & W. 586; *Baker v. Carter*, 1 Y. & C. 252, *per* Lord Abinger, C. B.; *Hide v. Haywood*, 2 Atk. 120; *Wilson v. Wilson*, 2 Keen, 249; *Attorney-General v. Wilson*, Cr. & Ph. 1; *Lyse v. Kingdon*, 1 Coll. 184; [*Thompson v. Eastwood*, 2 App. Cas. 215; *Heugh v. Scard*, 33 L. T. N. S. 659; 24 W. R. 51.]

(*q*) *Taylor v. Glanville*, 3 Mad. 178, *per* Sir J. Leach; *Smith v. Bolden*, 33 Beav. 262; *May v. Armstrong*, W. N. 1866, p. 233; *Jones v. Lewis*, 1 Cox, 199; *Earl of Scarborough v. Parker*, 1 Ves. jun. 267; *Kirby v. Mash*, 3 Y. & C. 295; *Thorby v. Yeats*, 1 Y. & C. C. C. 438; *Hampshire v. Bradley*, 2 Coll. 34; *Penfold v. Bouch*, 4 Hare, 271; and see *Burrows v. Greenwood*, 4 Y. & C. 251; *Hayhow v. George*, and *Southwell v. Martin*, 21 L. T. N. S. 135.

(*r*) *Attorney-General v. Daugars*, 33 Beav. 621.

(*s*) *Re Cabburn*, 46 L. T. N. S. 848.]

(*t*) *Re Hayter*, 32 W. R. 26.]

(*u*) *Turner v. Hancock*, 20 Ch. D. 303; *Re Evans*, 26 Ch. D. 58, 65.]

(*v*) *Cotterell v. Stratton*, 8 L. R. Ch. App. 295; *Farrow v. Austin*, 18 Ch. D. 58; *Turner v. Hancock*, 20 Ch. D. 303; *Re Sarah Knight's Will*, 26 Ch. D. 82; *Re Love*, 29 Ch. D. 348; but see *Taylor v. Dowlen*, 4 L. R. Ch. App. 697; *Re Hoskins' Trusts*, 6 Ch. D. 281.]

<sup>1</sup> *Brinton's Estate*, 10 Barr. 408.

settlement is itself set aside, the trustee has no claim to his costs as matter of right, as in that case there is no contract in existence, and accordingly he cannot appeal as to such costs (*w*).]

11. But where a bill was filed charging the trustee with a breach of trust both as to realty and personalty, and the charge failed as to the former but succeeded as to the latter, the Court said, it was scarcely possible to suppose that the trustee should be permitted to *have* his costs, but it would be injustice to make him *pay the whole costs*, as one part of the bill had failed, and he was therefore ordered to pay the costs of that part of the bill which had succeeded (*x*).

Where misconduct proved only in part.

[12. Where two trustees are jointly and severally liable for a breach of trust committed by one of them, the other trustee being innocent, the Court may order the guilty trustee to repay to the innocent trustee the costs of the action to repair the breach of trust (*y*).]

[Costs of innocent trustee may be thrown on guilty trustee.]

Where a trustee acting honestly has invested the trust funds on improper securities but has made good the loss to the trust estate before judgment in an action to execute the trusts, he will be allowed his costs; *Peacock v. Colling*, 33 W. R. 528.

\* 13. Trustees for sale had purchased in the [ \* 991 ] name of a trustee at an undervalue, but *without any imputation of fraud, and by auction*. As to so much of the suit as related to calling upon the trustees to submit to a resale, and the directions consequential thereon, the Court gave relief against the trustees *with costs*; but as to the accounts that must have been taken had the sale been unimpeachable, the trustees were allowed their costs (*z*).

Setting aside a purchase by trustees, and absence of fraud.

14. If the suit was occasioned by an innocent *mistake* of the trustee (such as an investment in good faith and without loss to the trust fund on a security not strictly correct (*a*)), the Court will content itself with *not giving* him costs (*b*), or will punish him with *payment of part* of the costs only (*c*), or will even allow him his

Mistake or slight neglect of the trustee.

[*(w)* Dutton v. Thompson. 23 Ch. D. 278.]

[*(x)* Pocock v. Reddington, 5 Ves, 800; [*Re Sarah Knight's Will*, 26 Ch. D. 82.]

[*(y)* Price v. Price, 42 L. T. N. S. 626; *Wilson v. Thomson*, 20 L. R. Eq. 459.]

[*(z)* Sanderson v. Walker, 13 Ves. 601.

[*(a)* Fitzgerald v. Fitzgerald, 6 Ir. Ch. Rep. 145.

[*(b)* O'Callaghan v. Cooper, 5 Ves. 117; *Mously v. Carr*, 4 Beav. 49; *Attorney-General v. Drapers' Company*, Ib. 71; *Devey v. Thornton*, 9 Hare, 222; [*Ryan v. Nesbitt*, W. N. 1879, p. 100.]

[*(c)* East v. Ryal, 2 P. W. 284.

costs (*d*); [but an official liquidator who is a paid agent is not entitled to the same latitude in the matter of costs as a gratuitous trustee (*e*).]

Administration suit mainly caused by a breach of trust.

Misconduct of the trustee discovered in the progress of the suit.

Clearance of default.

[Where defaulting trustee a bankrupt.]

15. Though, as a general rule, where a trustee commits a *breach of trust* he must pay the costs of a suit to repair it, yet he will be entitled to his subsequent costs relating to the ordinary taking of the accounts (*f*).<sup>1</sup>

16. If the suit did not originate from any necessity of enquiring into the conduct of the trustee, but, in the course of the proceedings instituted upon other grounds, it appears the trustee has in some particular instance been guilty of a breach of trust, the Court will not award against the trustee the costs of the *whole* suit, but only of so much of it as connects itself with his misconduct, and as to the rest of the suit will allow him his costs (*g*).

17. The Court never gives costs to a defaulting trustee while he continues in default, but the Court says, "when you have paid in the balance found due from you, then you shall have your costs" (*h*). But a bankrupt [formerly ceased] from the date of the bankruptcy [\* 992] \* to be a debtor to the trust estate, and was therefore entitled to his costs from the date of the bankruptcy (*i*).

[18. The liability of a trustee for his breaches of duty was, however, by the Bankruptcy Act, 1869, s. 49, continued notwithstanding his discharge, and there has been some conflict of opinion as to the right of a bankrupt trustee since that Act to his costs as from the date of the bankruptcy, but the better opinion seems to be that he is not entitled to such costs until he has made

(*d*) Taylor v. Tabrum, 6 Sim. 281; Flanagan v. Nolan, 1 Moll. 84; Travers v. Townsend, Ib. 496; Attorney-General v. Caius College, 2 Keen, 150; Bennett v. Atkins, 1 Y. & C. 247; Fitzgerald v. O'Flaherty, 1 Moll. 347; Attorney-General v. Drummond, 2 Conn. & Laws. 98; Royds v. Royds, 14 Beav. 54.

[(*e*) Re Silver Valley Mines, 21 Ch. D. 381.]

(*f*) Hewett v. Foster, 7 Beav. 348; and see Bate v. Hooper, 5 De G. M. & G. 345; Re King, 11 Jur. N. S. 899.

(*g*) Tebbs v. Carpenter, 1 Mad. 290, see 308; Newton v. Bennet, 1 B. C. C. 359; Pride v. Fooks, 2 Beav. 430; Heighington v. Grant, 1 Ph. 600.

(*h*) Birks v. Micklethwait, 33 Beav. 409; Watson v. Row, 18 L. R. Eq. 680; [Lewis v. Trask, 21 Ch. D. 862; Re Basham, 23 Ch. D. 195; McEwan v. Crombie, 25 Ch. D. 175.]

(*i*) Bowyer v. Griffin, 9 L. R. Eq. 340.

<sup>1</sup> Where the conduct of the trustee has rendered necessary a suit by the *cestui que trust* to get possession of income which the former should have paid him, the trustee is chargeable with the costs of his unsuccessful appeals from the decision against him. M'Carter's Est. 94 N. Y. 558.

good his default (*k*). By the Bankruptcy Act, 1883, (*l*), the liability of a trustee for a breach of trust (except in cases of fraudulent breaches) is released by the order of discharge, and it follows that under that Act, except in cases of fraud, a bankrupt trustee will, as from the date of his discharge, be entitled to his costs.

19. If an action be brought against the executor of a defaulting executor to administer the original testator's estate, the defendant's costs ought strictly to be borne, as to those incurred solely in reference to the original testator's estate out of that estate, as to those incurred in seeking relief against the defaulting executor out of his estate, and as to the remaining costs out of the two estates equally; but to avoid the complication and expense of thus apportioning the costs, the Court has allowed the defendant the costs of taking the account of the original testator's estate, and half the rest of his costs out of the original testator's estate (*m*).]

20. An executor, instead of accumulating a fund as directed by the will, had improperly kept the balance in his hands; but, as the amount of costs had in great measure been occasioned by the enquiry what rule the Court ought to adopt with respect to the computation of interest, it was thought hard under the circumstances to fix the executor with payment of costs even relatively to the breach of trust; and therefore the Court gave no costs (*n*).

21. In one case, as to part of the suit, the trustee ought from his misconduct to have *paid* the costs, and, as to another, to have been *allowed* his costs; and the Court, by a kind of compromise, left each party to pay his own costs (*o*).

22. When the breach of trust is trivial, the Court may overlook it altogether, and give the trustee his own costs (*p*).

\*[23. If the representative of a trustee who has [\*993] invested the trust estate on an unauthorized security, bringing an action to recover the trust estate, he will not

[(*k*) *Lewis v. Trask*, 21 Ch. D. 862; *Re Basham*, 23 Ch. D. 195; *McEwan v. Crombie*, 25 Ch. D. 175; *Secus, Clare v. Clare*, 21 Ch. D. 865.]

[(*l*) 46 & 47 Vict. c. 52, ss. 30, 37.]

[(*m*) *Re Griffiths*, 26 Ch. D. 465; and see *Palmer v. Jones*, 43 L. J. N. S. Ch. 349; *Re Kitto*, 28 W. R. 411.]

(*n*) *Raphael v. Boehm*, 13 Ves. 592.

(*o*) *Newton v. Bennet*, 1 B. C. C. 362.

(*p*) *Fitzgerald v. Pringle*, 2 Moll. 534; *Bailey v. Gould*, 4 Y. & C. 221; see 225; *Knott v. Cottee*, 16 Beav. 77; *Cotton v. Clark*, 16 Beav. 134; *Chugg v. Chugg*, W. N. 1874, p. 185.

be allowed the costs of that action as against the *cestuis que trust*, but must look for such costs to the estate of the trustee (*q*).]

Trustees protecting from parental influence.

24. The Court watches with jealous transactions between parent and child occurring shortly after the child has attained twenty-one, more especially when the transactions had their inception during minority, and trustees acting *bona fide* in refusing to convey under such suspicious circumstances will be entitled to their costs (*r*).

Trustee instituting a suit for his private ends.

25. If a trustee have a private interest of his own, separate and independent from the trust, and oblige the *cestui que trust* to come into a Court of equity merely to have some point relating to the trustee's private interest determined at the expense of the trust, that is such a vexatious proceeding in the trustee, that, for example's sake, he will be decreed to pay the whole costs of the suit (*s*).

Trustee falsely denying the plaintiff's claims.

26. If in a suit for an account the defendant states his belief that the plaintiff is considerably indebted to him, and after a long investigation it proves that the defendant is considerably indebted to the plaintiff, the trustee, thus daring the plaintiff to his account will be decreed to pay the costs (*t*). And if the balance be in favour of the trustee, but far below what he had stated, he will not be entitled to *have* his costs (*u*), or at least not the costs of the account itself (*v*).

Trustee misstating his accounts.

27. A trustee will be deprived of costs (*w*)<sup>1</sup>, or will even have to pay costs if he refuses to account (*x*), or if he wilfully mis-states the accounts (*y*), or if, by any chicanery in his answer, he keep the *cestui que trust* from a true knowledge of the accounts (*z*)<sup>2</sup>, or even if

[(*q*) *Gurney v. Gurney*, 48 L. T. N. S. 529.]

(*r*) *King v. King*, 1 De G. & J. 663, see 671.

(*s*) *Henley v. Philips*, 2 Atk. 48.

(*t*) *Parrot v. Treby*, Pr. Ch. 254; *Eglin v. Sanderson*, 3 Giff. 434.

(*u*) *Attorney-General v. Brewers' Company*, 1 P. W. 376.

(*v*) *Fozier v. Andrews*, 2 Jon. & Lat. 199.

(*w*) *Gresham v. Price*, 35 Beav. 47.

(*x*) *Boynton v. Richardson*, 31 Beav. 340; *Kemp v. Burn*, 4 Giff. 348; *Wroe v. Seed*, 4 Giff. 425; *Underwood v. Trower*, W. N. 1867, p. 83; [*Re Radclyffe*, 50 L. J. N. S. Ch. 317.]

(*y*) *Sheppard v. Smith*, 2 B. P. C. 372; and see *Flanagan v. Nolan*, 1 Moll. 86.

(*z*) *Avery v. Osborne*, Barn. 349; *Reech v. Kernegal*, 1 Ves. 123.

<sup>1</sup> *Chamberlain v. Estey*, 55 Vt. 378.

<sup>2</sup> *Burnham v. Dalling*, 7 Green (N. J.), 310.



he has kept the accounts in a very confused manner (*a*). And an executor will be liable to pay costs if he deny assets, and the contrary be established against him (*b*). But an executor is entitled \* to have the ac- [ \* 994 ] counts taken under the direction of the Court, and, therefore, even where he had obstructed the taking of the accounts, he was not decreed to pay the costs, though he was not allowed to have his costs (*c*). But in another case, where he had unnecessarily and unjustifiably protracted the suit, and multiplied the costs by his litigiousness, he was ordered to pay the costs of a simple administration suit up to the hearing (*d*).

28. Where a corporation filling the character of trustees for a grammar school by their answer pleaded ignorance of the claims of the charity, and the information was afterwards elicited from the documents scheduled to their answer, as the Court inferred from such conduct a disposition to obstruct and defeat the ends of justice, the corporation was decreed to pay the costs of the suit (*e*).

Corporation  
pleading  
ignorance  
falsely.

29. And a corporation similarly circumstanced was punished in the same manner where, the Court having directed the production of certain documents, it was afterwards discovered that a very material one had been suppressed (*f*).

Corporation  
suppressing  
documents.

30. The costs of the suit will be cast upon the trustee, if, in his answer, he set up a title of his own, and make an ill defence (*g*)<sup>1</sup>; and he will not be allowed to have his costs if he set up any trust different to what it actually is (*h*); and where a trustee filed an improper answer he was not allowed the costs of the answer (*i*).

Trustee  
setting up  
title of his  
own.

(*a*) *Norbury v. Calbeck*, 2 Moll. 461.

(*b*) *Sandys v. Watson*, 2 Atk. 80.

(*c*) *Re King*, 11 Jur. N. S. 899. [But under the Rules of the Supreme Court now in force, an executor instituting proceedings to have the accounts taken must, to entitle him to costs, be able to satisfy the Court that under all the circumstances of the case the institution of the action was reasonable. See Order 65, R. 1.]

(*d*) *Talbot v. Marshfield*, 4 L. R. Eq. 661, 3 L. R. Ch. App. 622.

(*e*) *Attorney-General v. Burgesses of East Retford*, 2 M. & K. 35.

(*f*) *Borough of Hertford v. Poor of same Borough*, 2 B. P. C. 377.

(*g*) *Loyd v. Spillet*, 3 P. W. 344; *Bayly v. Powell*, Pr. Ch. 92; *Willis v. Hiscox*, 4 M. & Cr. 197; *Attorney-General v. Drapers' Company*, 4 Beav. 67; *Attorney-General v. Christ's Hospital*, Ib. 73; *Irwin v. Rogers*, 12 Ir. Eq. Rep. 159.

(*h*) *Ball v. Montgomery*, 2 Ves. jun. 191, see 199.

(*i*) *Eddowes v. Eddowes*, 30 Beav. 603.

<sup>1</sup> *Waterman v. Cochran*, 2 Vt. 699.

Executor denying relationship of next of kin.

Costs where interest given against executors.

31. An executor sued by the next of kin had put the plaintiffs to the proof of their relationship, and, the fact not admitting a doubt, the executor was fixed with the costs of the enquiry (*k*).

32. It was laid down as a rule by Lord Thurlow, that "where the Court is obliged to *give interest against executors* as a remedy for a breach of trust, costs against [ \* 995 ] them will follow of course" (*l*)<sup>1</sup>; \* but Sir W. Grant said, "that was a proposition to which he was not quite prepared to accede, as there might be many cases in which executors must pay interest, which would not be cases for costs" (*m*); and the existence of any such rule has since been denied (*n*). The meaning of Lord Thurlow probably was, that where the suit was occasioned by the misconduct of the trustee, and the charge against him was shown to be well founded by the Court's fixing him with interest, the costs of the suit in that case would be consequential upon the relief (*o*).

---

(*k*) *Lowson v. Copeland*, 2 B. C. C. 156.

(*l*) *Seers v. Hind*, 1 Ves. jun. 294; and see *Franklin v. Frith*, 3 B. C. C. 433; *Mosley v. Ward*, 11 Ves. 581.

(*m*) *Ashburnham v. Thompson*, 13 Ves. 404.

(*n*) *Tebbs v. Carpenter*, 1 Mad. 308; *Woodhead v. Marriott*, C. P. Cooper's Rep. 1837-38, 62; *Holgate v. Haworth*, 17 Beav. 259; [*Re John Jones*, 49 L. T. N. S. 91.]

(*o*) See *Mosley v. Ward*, 11 Ves. 582.

---

<sup>1</sup> This rule has been followed in *Frey v. Frey*, 2 C. E. Green, 71; *Warbass v. Armstrong*, 2 Stockt. 266; *Duncomb v. Duncomb*, 1 Johns. Ch. 508.

No. I.

TRUSTEE RELIEF ACT.

10 & 11 VICT. CAP. 96

*"An Act for better securing Trust Funds, and for the Relief of Trustees."* (22nd July, 1847.)

WHEREAS it is expedient to provide means for better securing trust funds, and for relieving Trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all trustees, executors, administrators, or other persons having in their hands any monies *belonging to any trust whatsoever* (p),

(p) The owner of an estate charged with a sum in favour of another is not a trustee of that sum within the Act, for he has not the monies in his hands; and if it were held otherwise, the money might be paid into Court, and the incumbrancer would have to bear the costs of getting it out, whereas the nature of a charge is that the beneficiary is entitled to have it raised out of the estate, together with the costs of raising it; *Re Buckley's Trusts*, 17 Beav. 110; and see *Re Cooper's Legacy*, 17 Jur. 1087; *Warburton v. Cicognara*, 3 I. R. Eq. 592. But see Trustee Act, 1850, sect. 48.

It has been thought that where there is a power of sale without a power of signing receipts for the purchase-money, the purchaser may take the estate under the power of sale and pay the purchase-money into Court under the Trustee Relief Act; *Cox v. Cox*, 1 K. & J. 251. See Trustee Act, 1850, sect. 48.

A sum of money was payable by instalments, and the trustee after receiving one instalment paid it into Court, and on a petition of the *cestui que trust* the Court not only administered the instalment paid in, but also gave directions to the trustee as to the future instalments; and said the order would give ample indemnity to the trustee; *Re Wright's Settlement*, 1 Sm. & Giff. App. v. The Court had, in fact, no jurisdiction as to the instalments payable in future, and the order would be an indemnity in this sense only, that the trustee would be acting in a way which had received the sanction of the Court extra-judicially. See *Re Lloyd's Trusts*, 2 I. R. Eq. 507; and see Trustee Act, 1850, s. 31; and *Re Fortune's Trusts*, 4 I. R. Eq. 351.

[Trustees of charitable funds have a strict right to pay their trust money into Court and relieve themselves of the trust, without giving notice to the Charity Commissioners, notwithstanding

[ \* 997 ] \* or the major part of them, shall be at lib-

the 17th section of the Charitable Trusts Act, 1853, but their proper course is to apply first to the Commissioners ; *Re Poplar and Blackwall Free School*, 8 Ch. D. 543.]

Where money in which a *lunatic* is interested has been paid into Court, the Lord Chancellor, Lords Justices, or Master of the Rolls, or any Vice-Chancellor [under the old practice had, and under the present practice a Judge of the High Court] has jurisdiction under the Act to order repayment to the Poor Law Guardians of the expenses incurred by them for the support of the lunatic ; *Re Upfull's Trust*, 3 Mac. & G. 281 ; *Re Coleman's Trust*, 14 L. T. N. S. 587 ; *Re Parker*, 2 W. R. 139 ; *Re Ward's Estate*, 2 W. R. 406 ; *Re Drewery's Trust*, 2 W. R. 436 ; *Re Buckley's Trust*, Johns. 700 ; or [in the case of a lunatic not so found by inquisition] to order the maintenance of the lunatic ; *Re Sturge's Trusts*, 5 Jur. N. S. 423 ; *Re Burke*, 2 De G. F. & J. 124 ; 6 Jur. N. S. 717 ; *Re Law*, 7 Jur. N. S. 410 ; *Re Perry's Trusts*, 31 L. T. N. S. 775 ; 23 W. R. 335 ; [*Re Whitby's Trust*, W. N. 1877, p. 208.

If a lunatic is entitled to a fund which has been paid into Court under the Act, the Court has jurisdiction upon a petition presented in the Chancery Division under the Act and in lunacy to make an immediate order for the transfer of the fund to the account of the lunatic ; *Re Tate*, 20 Ch. D. 135.]

Monies due upon a *policy* may be paid under the Act into Court by an insurance company : United Kingdom Life Assurance Company, 34 Beav. 493 ; *Re Hall*, 10 W. R. 37 ; *Re Webb's Policy*, 2 L. R. Eq. 456 ; and the company will be entitled to their costs, as between solicitor and client ; *Re Webb's Policy*, 2 L. R. Eq. 456 ; *Re Cobbe*, 15 W. R. 29 ; *Re Haycock's Policy*, 1 Ch. D. 611. But in the last case the late M. R. observed that the Trustee Relief Act does not enable assurance companies to pay policy monies into Court after notice of conflicting claims, unless the policy monies were "monies belonging to some trust," in the words of the first section ; S. C. [And in *Matthew v. Northern Assurance Company*, 9 Ch. D. 80, where the assurance company, in consequence of conflicting claims, paid the policy money into Court and contended that they were thereby discharged from all liability, the late M. R. held in an action by an assignee of the policy against the assurance company for the recovery of the policy money, that the company were only stakeholders in a limited sense ; that the relation between them and the policy holder was that of debtor and creditor ; that there was no trust or constructive trust such as to entitle them to pay the money into Court under the Act ; and that the payment into Court was no discharge.

But now by 36 & 37 Vict. c. 66, s. 25, subs. 6, power is given to any *debtor trustee or other person* liable in respect of a debt or *chose en action*, and who has received notice of any written assignment thereof, to pay the same into Court, in the case of any disputed claim, under and in conformity with the provisions of the Trustee Relief Act. But this section only applies where there has been an assignment in writing of the debt or *chose en action* ; *Re Sutton's Trusts*, 12 Ch. D. 175.

Under the "Public Works Loans Act, 1875," 38 & 39 Vict. c. 89, s. 28, the secretary of the Public Works Loans Commissioners may pay into Court any surplus monies under the control of the Commissioners arising from the taking possession, lease, sale, mortgage, or other disposition under the act of any mortgaged property, as if he were a trustee.]

erty (q), on filing an affidavit shortly describing the instrument creating the trust (r) according to the \*best of their knowledge and belief, to pay [ \*998] the same, with the privity of the Accountant-General of the High Court of Chancery, into the Bank of *England* (s), to the account of such Accountant-General in the matter of the particular trust (t) (describing the

Trustees may pay trust monies or transfer stocks and securities into the Court of Chancery.

(q) Trustees are at *liberty* to pay in, but they are not *bound* to pay in, if they are willing to execute the trust without the aid of the Court; *Mountain v. Young*, 18 Jur. 769; and see *Handley v. Davies*, 5 Jur. N. S. 190.

(r) The *affidavit* must not go into the whole history of the trust, so as to show upon the accounts how the particular sum arose, or the trustee will be deprived of his costs; *Re Waring*, 16 Jur. 652. All the trustees should properly join in the affidavit as all may have some information to contribute, but under particular circumstances the Court (as the Act is silent who is to make the affidavit) will order the Paymaster-General to receive the money on the affidavit of one of several co-trustees; — *v. —*, 1 Jur. N. S. 974.

(s) The payment into Court may of course be made without an order of the Court; *Re Biggs*, 11 Beav. 27. And Annuities or Stocks of the Bank of England, or of the East India Company, or South Sea Company, or Government or Parliamentary securities, may be transferred into Court without an order, but *private securities* can only be deposited under the Trustee Relief Amendment Act, 12 & 13 Vict. c. 74, by an order to be made on petition. [But see *Re Ross's Trusts*, 28 W. R. 418, where V. C. Malins held that Railway Stock might be transferred into Court under the Trustee Relief Act.]

*Notice* of the payment into Court must by the general orders be given to the persons named in the affidavit as interested; but if a person interested cannot be found the notice may, by leave of the Court, be dispensed with; *Re Hansford*, 7 W. R. 199; [*Re Whitaker's Trusts*, 47 L. T. N. S. 507; 31 W. R. 114;] and where the parties are extremely numerous, the Court may give leave to substitute notice on some of them; *Re Colson's Trust*, 2 W. R. 111.

Where a person interested in the fund was *not named* as such in the affidavit upon which the money was paid into Court, it was held that he could not make his claim upon petition, but the Court gave him leave to file a bill; *Re Jephson*, 1 L. T. N. S. 5. But this case has not been followed in subsequent practice. [See *Re Puttrell's Trusts*, 7 Ch. D. 647; *Pelling v. Goddard*, 9 Ch. D. 185.]

When an executor, after paying money into Court, discovered *debts* of the testator, he was allowed to have the money paid back to him out of Court on his undertaking to apply it properly; *Ex parte Tournay*, 3 De G. & Sm. 677.

(t) The money must not be paid in by an executor to an account "the trusts of the testator's will," for this implies not a particular trust, but a general administration of the testator's estate. The executor must take on himself the responsibility of severing the fund from the testator's assets and appropriating it to the particular purpose, and then pay it in to the limited account. If it has already been paid in to an account too general for the Court to deal with, it may be carried over to the correct account, and the Court will then proceed to adjudicate upon the rights of the parties; *Re Joseph's Will*, 11 Beav. 625; *Re Everett*, 12 Beav.

Receipt of  
Bank  
Cashier, or  
certificate of  
proper  
officer, to be  
sufficient  
discharge.

same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the said Court (*u*); and that all trustees or other persons having any annuities or stocks standing in their name in the books of the Governor and Company of the Bank of *England* or of the *East India Company* or *South Sea Company*, or any *Government* or *Parliamentary securities* (*v*) standing in their [\* 999] names (*w*), or in the names \* of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such stocks or securities into or in the name of the said Accountant-General, with his privity, in the matter, of the particular trust, (describing the same as aforesaid), in trust to attend the orders of the said Court; and in every such case the receipt of one of the cashiers of the said Bank for the money so paid, or in the case of stocks or securities the certificate of the proper officer, of the transfer or deposit of such stocks or securities, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the stocks or securities so transferred or deposited (*x*).

485; *Re Wright's Will*, 15 Beav. 367; *Re Robinson's Trust*, 1 Jur. N. S. 750; *Re Coulson's Trust*, 4 Jur. N. S. 6; *Re Godfrey's Trust*, 2 Ir. Ch. Rep. 105; and see *Re Monahan*, 8 I. R. Eq. 353. If the fund has been paid to the account of the *testator's estate*, and in the matter, &c., the Court will not proceed without the presence of the personal representative and his admission of assets; *Re Edwards' Estate*, 4 W. R. 801. As to the proper heading of the account, see further, *Re Jervoise*, 12 Beav. 209; *Re Tillstone's Trusts*, 9 Hare, App. lix; and see Appach on the Acts, p. 44.

(*u*) The *County Courts* have now jurisdiction where the sum does not exceed 500*l.*; 28 & 29 Vict. c. 99, s. 1.

(*v*) The Act does not extend to the bonds of a *foreign Government*; *Re Lloyd's Trust*, 2 W. R. 371.

(*w*) Where stock is standing in the joint names of a deceased and a surviving trustee, the *survivor may* transfer into Court under the Act; *Re Parry*, 6 Hare, 306.

(*x*) The payment into Court is a *discharge* only as to the money paid in, and leaves the trustee liable to a suit in respect of the costs deducted by him, or in respect of any other monies that might be recovered upon the footing of the trust; see *Beatty v. Curson*, 7 L. R. Eq. 194; *Goode v. West*, 9 Hare, 378; *Re Jephson*, 1 L. T. N. S. 5; *Attorney-General v. Alford*, 2 Sm. & G. 488; *Thorp v. Thorp*, 1 K. & J. 438; and the trustee cannot require a fund to be kept in Court to indemnify him against threatened proceedings; *Re Wright's Trusts*, 3 K. & J. 419; and see *England v. Lord Tredegar*, 35 Beav. 256.

Trustees by paying money into Court *retire* from their trust, and cannot thereafter exercise the powers of the trust; *Re Coe's Trust*, 4 K. & J. 199; *Re Williams's Settlement*, 4 K. & J. 87; *Re Tegg's Trusts*, 15 L. T. N. S. 236; 15 W. R. 52; [*Re Mul-*

II. And be it enacted, That such orders as shall seem fit (*y*), shall be from time to time made by the High Court of Chancery in respect of the trust monies, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment (*z*) and payment (*a*) of any such \*monies, or of any dividends or [ \* 1000 ] interest on any such stocks or securities, and for the transfer and delivery of any such stocks and securities, and for the administration of any such trusts generally, upon a petition (*b*) \*to be presented in a [ \* 1001 ]

queen's Trusts, 7 L. R. Ir. 127;] and come under the usual words of "Trustees desirous of being discharged," so as to call into operation a power of appointing new trustees in that event; *Re Bailey's Trust*, 3 W. R. 31.

Trustees, if they pay into Court, should pay in the whole fund, and if they do not, then, unless there be mistake or some ground of justification, they will bear the costs of accounting for the balance; *Mitchell v. Cobb*, 17 L. T. 25. But trustees may deduct the reasonable costs of the payment into Court where no dispute has arisen or is likely to arise as to the deduction; *Beaty v. Curson*, 7 L. R. Eq. 194; and see *Re Fortune's Trusts*, 4 I. R. Eq. 351.

(*y*) Where the Court is not satisfied as to the facts by affidavit, it will, before making an order direct an enquiry; *Re Wood's Trust*, 15 Sim. 469; and see *Re Sharpe's Trust*, 15 Sim. 470.

The Court has a discretion to be governed by the circumstances of the case, and, therefore, where money belonging to a lunatic found such in France was paid into Court, and the French curator (in whom by the French law the property became vested for the maintenance of the lunatic) applied for payment of the fund to himself, the Court refused to transfer the capital, and directed payment to him of the dividends only; *Re Garnier*, 13 L. R. Eq. 532.

(*z*) The Court has ordered an investment in *New Three Per Cent. Bank Annuities*; *Re Dunster's Trusts*, 3 W. R. 267.

Where trustees were empowered with the consent of the tenant for life to invest in shares of railway companies guaranteed by the Indian Government, and the money was paid into Court under the Act, the Court declined to sanction such an investment, but offered to appoint new trustees and transfer the fund to them, with an intimation that the trustees had power to make the investment; *Re Sillar*, W. N. 1871, p. 3.

(*a*) The Court has ordered payment of income to the first tenant for life, and by the same order, on proof of his death to the Accountant-General, to the next tenant for life; *Re Brent's Trust*, 8 W. R. 270.

(*b*) The application must be made by petition, [*Pelling v. Goddard*, 9 Ch. D. 185;] and cannot be made upon motion; *Re Manselin's Will*, 15 Jur. 1073; *Ex parte Stock*, 5 Ir. Ch. Rep. 341; nor by an order on further directions in a cause; *Otte v. Castle*, 1 W. R. 64; but see *Dixon v. Morley*, W. N. 1869, p. 49; [*Davies v. Davies*, 1 Set. on Decrees 496, 4th edit.;] nor, except where the [money or securities in Court do not exceed 1,000*l.* or 1,000*l.* nominal value (see Rules of the Supreme Court, 1883, Order 55, Rule 2 (5).)] upon a summons at Chambers. But when an order has been once made upon a petition in compliance with the Act, so as to found the jurisdiction, any further proceedings may be at Chambers, *Re Hodges*, 4 De G. M. & G. 491; and see *Re*

**summary way to the Lord Chancellor or the Master of**

Tracey's Trusts, (under the Irish Act), 6 I. R. Eq. 271; [and where an order directing inquiries is made in Court upon a petition the further hearing of the petition may be adjourned into Chambers; *Re Moate's Trusts*, 22 Ch. D. 635.]

The trustees themselves (see Order 6, p. 1006, *post*) are *competent to present the petition*, but they are not the proper persons, and if they present the petition the Court will not allow them more than respondent's costs; *Re Cazneau's Legacy*, 2 K. & J. 249; *Re Hutchinson's Trusts*, 1 Dr. Sm. 27. [And see *Re Poplar and Blackwall Free School*, 8 Ch. D. 543.]

In one case the trustees, after paying in, applied by petition to have the fund distributed as in an administration suit, and the Court directed proper inquiries accordingly as to the persons interested; *Re Trower's Trust*, 1 L. T. N. S. 54.

The petition should set out the material statements of the affidavit under which the money is paid in, as the affidavit is regarded as a declaration of the trust to which the attention of the Court is to be called; *Re Levett's Trust*, 5 De G. & Sm. 619; *Re Flack's Will*, 10 Hare, App. xxx. But the petition must not set out the affidavit *in extenso*, or at a needless length; *Re Curtois*, 17 Jur. 852; 10 Hare, App. lxiv., and see *ante*, p. 997, note (b).

Where a petition stands over for *amendment*, by adding a next friend on behalf of the petitioner, it is not necessary to have the petition reanswered; *Re Medow's Trusts*, 10 Jur. N. S. 536.

[A petition is the proper means of obtaining a stop order, where the fund is over £1,000 (see *supra*), and the application for it is the first application after the payment into Court; *Re Day's Trusts*, 49 L. T. N. S. 499.]

A claimant may proceed in *forma pauperis* under the Act; *Re Money*, 13 Beav. 109.

A trustee who did not concur with his co-trustees in paying the money into Court, must still be served with any petition under the Act; *Re Bryant's Settlement*, W. N. 1868, p. 123.

Where an *infant* is to be served, a guardian *ad litem* should be appointed; *Re Ward's Will*, 2 Giff. 122; *Re Gillman's Trusts*, 1 I. R. Eq. 342. Under the Irish Act, guardians *ad litem* to infants are appointed upon motion; *Re Bennett's Trusts*, 6 I. R. Eq. 337.

The Court will declare the rights of parties upon a petition under the Act; *Re Walker's Trusts*, 16 Jur. 1154. And where the petitioner, as it turns out, is not himself entitled, the Court, if it be necessary to declare the rights, and the trustees desire the opinion of the Court, will declare the rights and give all the parties their costs, as in a suit under similar circumstances; *Re Woolard's Trust*, 18 Jur. 1012.

A petition may be presented by a person entitled to an *aliquot share* without bringing the other parties interested before the Court; *Re Belford's Will*, 21 L. T. 164. A petition by a person so entitled should ask that the other shares should be carried to the separate accounts of the other persons entitled, in order to save the expense of serving the petition on any future application; *Re Hawke's Trust*, 18 Jur. 33. See *Re Young*, 5 W. R. 400. Or liberty may be given to the other parties entitled to apply at chambers; *Winkworth v. Winkworth*, 32 Beav. 233; and see *Re Tracey's Trusts*, 6 I. R. Eq. 271.

Where the claimants to the fund in opposition to the petitioner reside *abroad*, the Court will give them time to make out their case; *Re Hodson's Will*, 22 L. J. N. S. Ch. 1055.



the Rolls, without bill, by such party or parties, as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct (c); and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to re-hearing and appeal, in the same manner as if the same had been

(c) See [Orders 7 and 8 of Chancery Funds Amended Orders, 1874,] *post*, 1006.

[Where on the hearing of a petition class inquiries were directed, and the chief clerk made a certificate finding who were the persons interested in arguing the question in dispute, but several of those persons were not respondents, the petitioner was authorized by the Court to serve a copy of the petition, the order made on the first hearing, and the certificate, on those persons, and the hearing of the petition was adjourned to give the persons served an opportunity of appearing; *Re Battersby's Trusts*, 10 Ch. D. 228.]

It was intimated by V. C. Wood, on a petition by tenant for life for payment of the income, that for the future he should hold it unnecessary to serve the remainderman; *Re Whitting's Settlement*, 9 W. R. 830; and see *Ex parte Peart*, 17 L. J. N. S. Ch. 168. And where the corpus was only carried over to a particular account, service on the remaindermen, who were extremely numerous, was dispensed with; *Re Hodges*, 6 W. R. 487; and in another case the Court gave no costs to the remainderman, who, the Court said, merely came to look after his own interests; *Re Thornton's Trust*, 9 W. R. 475.

When money has been paid into Court, and part of it has, by an order of the Court, been carried to the separate account of a *cestui que trust*, the trustees need not be served again on application by the *cestui que trust* to have it paid out of Court; *Re Young*, 5 W. R. 400.

If the trustee try to avoid service, the Court on being satisfied of the fact will make the order without service; *Ex parte Baughman*, 16 Jur. 325.

Where the trustees had not been heard of for ten years, and the place named for the service in the trustees' affidavit had been pulled down, the Court dispensed with service on the trustees, but directed an inquiry at chambers who were the persons entitled; *Re Bolton's Will*, 18 W. R. 56; 21 L. T. N. S. 413.

It has been held under the Irish Act, 11 & 12 Vict. c. 68, which is similarly worded, that the Court has no jurisdiction to order service upon a person out of the jurisdiction; *Ex parte Crawford*, 2 Ir. Ch. Rep. 573; *Ex parte Bernard*, 6 Ir. Ch. Rep. 133. In *Re Bonelli's Electric Telegraph Company*, 18 L. R. Eq. 655, V. C. Bacon ordered a substituted service, and also service abroad. But in *Re Haney's Trusts*, W. N. 1874, p. 221, the V. C. expressed a doubt as to service abroad, as the M. R. had previously decided in *Re Mewburn's Settled Estates* (22 June, 1874) that this could not be done. However the L.JJ. adopted the view of V. C. Bacon, and ruled that the Court has jurisdiction to order service abroad; *Re Haney's Trusts*, 10 L. R. Ch. App. 275; [and this view has since been acted on by the late M. R. in *Re Morant's Trusts*, W. N. 1879, p. 144; and followed in Ireland, *Re Dunnes Trusts*, 1 L. R. Ir. 12.] And see *Re Gethin*, 9 I. R. Eq. 512.

made in a suit regularly instituted in the Court (*d*), and [ \* 1002] if it shall \* appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted (*e*).

(*d*) The Court under this Act has as ample jurisdiction as in a suit, and may therefore declare the *validity* or *invalidity* of a deed without directing fresh proceedings, if the Court in the exercise of its discretion do not think a suit necessary; *Lewis v. Hillman*, 3 H. L. C. 607; [or may order a deed to be rectified; *Re Bird's Trusts*, 3 Ch. D. 214.] But in general the Court will not allow a deed to be impeached upon the petition without a suit; *Way's Settlement*, 10 Jur. N. S. 1166. In one case *V. C. Wood*, in disposing of a fund on petition, said that if there were creditors or other unascertained claims, a suit might be necessary, but that otherwise the Court had jurisdiction as in a suit, and might direct an issue to try a question of *sanity* or the like; *Re Allen's Will*, Kay App. li. Where trustees of a marriage settlement had transferred the fund into Court, and a petition was presented by a person claiming adversely to the settlement, *V. C. Wood* disposed of the case upon the petition, no party having objected; but before the Lords Justices, the respondent not consenting, the petition was ordered to stand over that a bill might be filed; *Re Fozard's Trust*, 1 K. & J. 233; 24 L. J. N. S. Ch. 441; and see *Re Bloye's Trust*, 2 H. & Tw. 140; 1 Mac. & G. 488; *Ex parte Stutely*, 1 De G. & Sm. 703.

An order made by the Court for maintenance of an infant out of a fund paid into Court, and to which the infant is entitled, constitutes the infant a *ward of Court*; *Re Hodges' Settlement*, 3 K. & J. 213; [and see *De Pereda v. De Mancha*, 19 Ch. D. 451; *Brown v. Collins*, 25 Ch. D. 56.]

(*e*) The Court directs a suit for its own satisfaction only, and will not authorize the petitioner to commence an action because it may be the more convenient course for making out his title; *Re Harris's Trust*, 18 Jur. 721. Though a person be not named as a *cestui que trust* in the affidavit upon which the money was paid in, yet if he can make a *prima facie* case, the Court will give him leave to bring an action; *Re Jepson*, 1 L. T. N. S. 5.

When a trustee filed a bill instead of paying in under the Trustee Relief Act, the Court allowed him only such costs as he would have been entitled to had he paid in under the Act; *Wells v. Malbon*, 31 Beav. 48; and see *Gunnell v. Whitear*. 10 L. R. Eq. 664.

The following is a summary of the decisions in reference to costs under the Act :—

The trustee who is served with the petition is *prima facie* entitled to his costs; *Re Erskine's Trust*, 1 K. & J. 302; *Croyden's Trust*, 14 Jur. 54; *Re Wyll's Trusts*, 28 Beav. 458; *Re Wright's Trusts*, 3 K. & J. 419; *Re Headington's Trust*, 27 L. J. N. S. Ch. 175; *Re Robertson's Trust*, 6 W. R. 405; and it is not thought desirable to hold too strict a hand over trustees paying in trust monies; *Re Wyll's Trust*, 6 Jur. N. S. 906; *Re Brocklesby*, 29 Beav. 652; *Re Bendyshe*, 3 Jur. N. S. 727; though it is not matter of course that they should have their costs; *Re Elgar*, 11 L. T. N. S. 415; *Re Lane's Trust*, 24 L. T. 181; and see *Hankey v. Morley*, 4 Jur. N. S. 234; *Handley v. Davies*, 5 Jur. N. S. 190.

[But a trustee is within Rule 27 (19) of Order 65 of the Rules

\*IV. And be it enacted, That the Lord [\* 1003] Lord Chancellor, with the assistance of the Master of the Rolls or one of the Vice-Chancellors, shall have

of the Supreme Court, 1883, and if he has been tendered and has accepted 30s. for his costs, he will not be allowed his costs of appearing on the petition, if he comes merely to ask for his costs, and his appearance is otherwise unnecessary; *Re Sutton*, 21 Ch. D. 855.]

Chancellor;  
with Master  
of the Rolls,  
&c., may  
make General  
Orders.

In Ireland the costs of lodging a trust fund in Court are restricted in ordinary cases to 8l. *Re Boyd's Trusts*, 1 Ir. Rep. Eq. 489. And if they retain more they may be deprived, in consequence, of their costs of appearing on the petition; *Re Blayney's Trust*, 9 I. R. Eq. 413.

A trustee objected to act with a proposed new trustee of whom he disapproved, and on the appointment of such new trustee the old trustee paid the fund into Court, and was allowed his costs; *Re Williams' Trust*, 6 W. R. 218.

A trustee holding a *chose en action* to which a married woman is entitled, is justified, having regard to her right to a settlement, in paying it into Court; *Re Swan*, 2 H. & M. 34. But see *contra*, *Re Roberts' Trusts*, 38 L. J. N. S. Ch. 708.

But a trustee who, after accepting the trust, throws it up from caprice soon after, and pays the money into Court, will not have his costs of appearing on the tenant for life's petition; *Re Leake's Trusts*, 32 Beav. 135.

When the trustee has paid in the fund abusively, as in order to avoid an action about to be brought against him, he will have no costs; *Re Waring*, 16 Jur. 652; and *Re Fagg's Trust*, 19 L. J. N. S. Ch. 175. And on the other hand, where a trustee refuses in a proper case to pay the fund into court, and obliges the *cestuis que trust* to bring an action, the Court will not allow him all his costs of suit, but only such costs as he would have got had he paid the money into Court, and then the plaintiff had presented a petition; *Weller v. Fitzhugh*, 22 L. T. N. S. 567; *Gunnell v. Whitear*, 10 L. R. Eq. 664. And where he has transferred the fund into Court without sufficient reason, though he may be allowed his costs of the transfer, he will not be allowed the costs of appearing on the petition; *Re Covington's Trust*, 1 Jur. N. S. 1157; *Re Heming's Trust*, 3 K. & J. 40; and see *Croyden's Trust*, 14 Jur. 54; *Re Leake's Trusts*, 32 Beav. 135; and in cases of gross misconduct in paying in the fund, the Court has jurisdiction to throw upon the trustee personally the costs of the petition; *Re Woodburn's Will*, 1 De G. & J. 333; *Re Cater's Trust*, 25 Beav. 361, 366; *Re Knight's Trusts*, 27 Beav. 45; *Re Foligno's Mortgage*, 32 Beav. 131; *Re Glendenning*, W. N. 1867, p. 191; *Re Roberts' Trusts*, 38 L. J. N. S. Ch. 708; *Re Wise's Trust*, 3 I. R. Eq. 599; *Re Elliott's Trusts*, 15 L. R. Eq. 194; [*Re Hoskin's Trusts*, 5 Ch. D. 229, 6 Ch. D. 281. But if a trustee is without sufficient reason deprived of his costs, he may *seemle* appeal for them; *Turner v. Hancock*, 20 Ch. D. 303, 307; disapproving, *Re Hoskin's Trusts*, *ubi supra*; and see *supra*, p. 990.]

If the person who pays in is the personal representative of a testator whose will creates the difficulty, the executor should take his costs of paying in the fund out of the testator's estate, but the subsequent costs come out of the fund; *Re Cawthorne*, 12 Beav. 56; *Re Jones*, 3 Drew. 679; *secus*, however, if the trust fund has been severed from the testator's estate, and is paid in by a trustee and not by the executor; *Re Lorimer*, 12 Beav. 521; *Ex parte Lucas*, V. C. Knight Bruce, 6 July, 1849.

[\* 1004] \*power and is hereby authorized to make

The Court cannot direct the costs to be paid out of another fund, also paid in by the trustee, but standing to a different account, though it may form part of the testator's residuary estate, and therefore be, *per se*, liable to costs; *Re Hodgson*, 18 Jur. 786; S. C. 2 Eq. Rep. 1083; nor out of the testator's residuary estate when it has not been paid in; *Re Bartholomew's Will*, 13 Jur. 380; and see *Re Sharpe's Trusts*, 15 Sim. 470; *Re Feltham's Trusts*, 1 K. & J. 534. But see *Re Trick's Trusts*, 5 L. R. Ch. App. 170. But where five-sixteenths of a fund paid into Court had lapsed, the Court threw the whole costs on the lapsed shares as constituting part of the residue; *Re Ham's Trust*, 2 Sim. N. S. 106.

If a trustee deducts his costs before paying in the fund, the Court has no jurisdiction as to the sum deducted; *Re Bloye's Trust*, 1 Mac. & G. 504; 2 Hall & Tw. 153; *Re Barber*, 9 Jur. N. S. 1098; *Re Fortune's Trusts*, 4 L. R. Eq. 351. But where the trustee is allowed the costs of the petition, his costs will be taxed, including those which he had deducted; *Re Hue's Trusts*, 27 Beav. 337; and where a trustee has deducted costs improperly, an action may be brought against him for recovery of the costs so improperly deducted, and the costs of the action will be thrown upon the trustee; *Beaty v. Curson*, 7 L. R. Eq. 194.

It has been held, though the policy of the decision may be doubtful, that the trustee who is served with a petition will not be allowed in taxation the costs of taking copies of the affidavits filed by the parties beneficially interested; *Re Lazarus*, 3 K. & J. 555.

Whether on a petition by tenant for life for payment of the dividends the costs should come out of the corpus or out of the income is a point on which the practice has much varied. In favour of the payment out of the corpus are the following cases: *Re Ross's Trust*, 1 Sim. N. S. 196, V. C. Cranworth; *Re Staple's Settlement*, 13 Jur. 273, 273, V. C. E.; *Re Field's Trusts*, 16 Beav. 146; *Re Butler's Trust*, 16 Jur. 324; and *Re Leake's Trusts*, 32 Beav. 135, Sir J. Romilly; and in support of the contrary view; *Ex parte Fletcher*, 12 Jur. 619; 17 L. J. N. S. Ch. 169; *Ex parte Peart*, 12 Jur. 620; 17 L. J. N. S. Ch. 168, V. C. Knight Bruce; *Re Lorimer*, 12 Beav. 521, Lord Langdale; *Re Bangle's Trust*, 16 Jur. 682; *Re Ingram*, 18 Jur. 811, V. C. Kindersley; *Re Jepson*, 6 March, 1859, V. C. Wood; and *Re Hamersley's Settlement*, 23 Beav. 267, Sir J. Romilly.

In other cases the costs have been divided, and the costs of the tenant for life thrown on the income, and the costs of the trustees and remainderman on the corpus; *Re Whitling's Settlement*, 9 W. R. 830; *Re Tchitchagoff's Will*, 12 W. R. 1100; *Re Hadland's Settlement*, 23 Beav. 266.

In *Re Turnley*, 1 L. R. Ch. App. 152, Lord Romilly wished the point in question to be submitted to the Lord Chancellor, who directed the costs to be paid out of the corpus.

But the costs cannot be thrown on the corpus without service on the remainderman; *Ex parte Peart*, 17 L. J. N. S. Ch. 168; *Ex parte Fletcher*, 17 L. J. N. S. Ch. 169; or on those who sufficiently represent them; *Re Greenland's Trust*, 1 W. R. 46. And as the necessity of serving the remaindermen would lead to great inconvenience and expense, it was resolved by all the judges that for the future the costs of a petition for payment of dividends should be thrown upon the income, and service upon the remaindermen be dispensed with; *Re Marner's Trusts*, 12 Jur. N. S. 959, 3 L. R. Eq. 432; *Re Cameron*, 1 L. R. Eq. 258. The rule therefore now is, that upon a petition for payment of dividends

such orders as from time to \*time shall [ \* 1005 ] seem necessary for better carrying the provisions of this Act into effect (f).

only, while the costs, charges and expenses properly incurred by the trustee in paying the money into Court will, where not previously deducted, be directed to be paid out of the *corpus* (*Re Whitton's Trusts*, 8 L. R. Eq. 353), the costs of the petitioners and of all persons appearing on the petition will fall upon the income; *Re Mason's Trusts*, 12 L. R. Eq. 111; *Re Whitton's Trusts*, 8 L. R. Eq. 353. It was held in some cases, that the costs of the trustee's appearance upon the petition were an exception, and ought to be borne by the *corpus* (*Re Gordon's Trusts*, 6 L. R. Eq. 335; *Re Wood's Trusts*, 11 L. R. Eq. 155), but this has since been determined otherwise; *Re Evans' Trusts*, 7 L. R. Ch. App. 609; *Re Smith's Trusts*, 9 L. R. Eq. 374. "It is said," observed L. J. James, "that a difference ought to be made with respect to the appearance of the trustees, but I think that *Re Marner's Trusts* was intended to apply to all the costs of the petition; and I am the more disposed to follow that construction, because the reasonable course for a tenant for life to pursue, when about to present a petition, is to write to the trustee and tell him that he does not seek to affect the *corpus*, but only wants his income, and therefore that there is no occasion for the trustee to incur the costs of appearing. In such a case, if the title of the tenant for life be clear the trustee ought not to appear." But it was probably intended by the L. J., that the letter must be accompanied with the tender of a sufficient sum to cover the expense of the trustee's consulting his solicitor; [see now rule 27 (19) of Order 65 of Rules of the Supreme Court, 1883.]

If a person not appearing by the affidavit to have an interest, but who made a claim, be served with the petition and *disclaim* at the bar, he will not be allowed his costs; *Re Parry's Trust*, 12 Jur. 615; *Re Smith*, 3 Jur. N. S. 659.

If the money was paid in from the unreasonable claim of a person who is served with and appears upon the petition, and *opposes* it, the Court has jurisdiction to throw the costs upon such wrongful claimant; *Re Armston's Trusts*, 4 N. R. 450; S. C. 4 De G. J. & S. 454.

If the petition be presented by an incumbrancer, whose debt will swallow up the whole fund, and be served on a subsequent incumbrancer with notice that his costs of appearing will be resisted, such subsequent incumbrancer, if he appear, will not have his costs; *Roberts v. Ball*, 24 L. J. N. S. Ch. 471.

The costs in all cases are in the discretion of the Court; *Roberts v. Ball*, 24 L. J. N. S. Ch. 471.

(f) [This section has become obsolete, and was repealed by 42 & 43 Vict. c. 78. The general rules and orders relative to this Act now in force are as follows:—

#### SUPREME COURT FUNDS RULES, 1884.

RULE 41. When a trustee or other person desires to lodge<sup>1</sup> funds in Court in the Chancery Division, under the Act 10 & 11 Vict. c. 96, he shall annex to the affidavit to be filed by him pursuant to the said Act a schedule in the same printed form as the lodgment schedule to an order, setting forth—

(a) His own name.

[<sup>1</sup> "Lodge in Court" means pay or transfer into Court or deposit in Court; see Rule 3.]

Construction  
of expression  
"Lord  
Chancellor."

[ \* 1006] \* V. And be it enacted, That in the con-

- (b) The amount of money and description and amount of securities proposed to be lodged in Court.
- (c) The ledger credit to be opened in the Pay Office books, in the matter of the particular trust to which the funds are to be placed.
- (d) A statement whether legacy or succession duty (if chargeable) or any part thereof has or has not been paid.
- (e) A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any and what description of Government securities, or whether it is deemed unnecessary so to invest the same.

The Paymaster on receipt of an office copy of such schedule (which is to be retained by him) shall issue the necessary direction for giving effect to such lodgment.

RULE 74. When it is stated in the schedule to the affidavit made pursuant to Rule 41, that it is desired that any money to be lodged in Court, or the dividends accruing on any securities to be lodged in Court in pursuance of the Act 10 & 11 Vict. c. 96, and the accumulations thereof, shall be invested in any description of Government securities, the Paymaster shall (if or so soon as such money shall amount to or exceed £40, or so soon as dividends accruing on such securities shall amount to or exceed £10) invest the same accordingly, without any order or further request for that purpose. If such money does not amount to £40 (and is not less than £10), the Paymaster shall place such money on deposit without a request for that purpose, unless the said schedule contains a statement that it is deemed unnecessary to place such money on deposit, or unless notice in writing be left at the Pay Office of an order having been made, or of an intended application to the Court affecting such money, securities, or dividends. Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the said Act prior to the commencement of the Chancery Funds Rules, 1872, may, when, or so soon as they amount to or exceed £10, be invested without request.

#### CHANCERY FUNDS AMENDED ORDERS, 1874.

ORDER 5. A person having made a payment or transfer of money or securities into, or a deposit of securities in Court under the above-mentioned Act of the 10th and 11th Vict. c. 96, shall forthwith give notice thereof to the several persons named in his affidavit<sup>1</sup> to be made in pursuance of Rule 34 of the Chan-

[<sup>1</sup> Where the person mentioned in the affidavit could not be found, the Court declined to give any directions as to what would be sufficient notice, but intimated extra-judicially what, under the circumstances, would probably be held to be sufficient; *Re Hardley's Trusts*, 10 Ch. D. 664. It will be observed that, under the Supreme Court Funds Rules, 1884, which repealed the Chancery Funds Consolidated Rules, 1874, it is not necessary to state in the affidavit the names of the persons interested in or entitled to the fund, and this order, though not expressly repealed, has become inapplicable to the practice under the Rules of 1884; but in a case under the recent Rules, *Pearson, J.*, in order to protect the trustees and prevent useless litigation, directed that notice of the affidavit should be served in the same way and upon the same parties as it would have been if the 34th Rule of the Chancery Funds Consolidated Rules, 1874, had remained in force; *Re Stening's Trust*, 50 L. T. N. S. 586.

struction of this Act the expression "the Lord Chancellor" shall mean and include 'the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of *Great Britain* for the time being.

cery Funds Consolidated Rules, 1874, and the said Act, as interested in or entitled to such money or securities.<sup>1</sup>

ORDER 6. The persons interested in or entitled to any money or securities so paid or transferred into, or deposited in Court, in pursuance of the said Act of the 10th & 11th Vict. c. 96, and named in the affidavit, or any of such persons, or the person so paying or transferring into or depositing in Court may apply by petition, or, in cases where the fund does not exceed 300*l.* cash or 300*l.* in securities<sup>2</sup> by summons as occasion may require, respecting the investment, payment out, or distribution of the money or securities, or of the dividends or interest of such securities.

ORDER 7. A person who has paid or transferred money or securities into, or deposited securities in Court pursuant to the said Act of the 10th & 11th Vict. c. 96, shall be served with notice of any application made to the Court, or a Judge in Chambers, respecting such money or securities, or the dividends thereof, by any person interested therein or entitled thereto.

ORDER 8. The persons interested in or entitled to such money or securities shall be served with notice of any application made by the trustee to the Court, or Judge, respecting such money or securities, or the dividends thereof.<sup>3</sup>

ORDER 9. No petition relating to such money or securities as mentioned in the last four preceding Orders shall be set down to be heard, and no summons relating thereto shall be sealed until the petitioner or applicant has first named in his petition or summons a place where he may be served with any petition or summons, or notice of any proceeding or order relating to such money or securities, or the dividends thereof.

ORDER 10. Petitions presented and summonses issued under the said Act of 10 & 11 Vict. c. 96, shall be entitled in the matter of the said Act and in the matter of the particular trust.].

<sup>1</sup> Where a *cestui que trust* was believed to be in New York, but the address was unknown, the Court allowed publication in two New York papers to be sufficient notice: *Re Goodsman's Will*, W. N. 1870, p. 152.

<sup>2</sup> Now extended by Rules of the Supreme Court, Order 55, R. 2, (5) to cases where the money or securities in Court do not exceed £1,000 or £1,000 nominal value.]

[<sup>3</sup> This notice may be dispensed with under special circumstances, as where a person has gone abroad many years ago and has not since been heard of; *Re Whitaker's Trusts*. 47 L. T. N. S. 507; 31 W. R. 114; *Re Hansford*, 7 W. R. 199, 254.]

## TRUSTEE RELIEF AMENDMENT ACT.

12 &amp; 13 VICT. CAP. 74.

*"An Act for the further Relief of Trustees." (28th July, 1849.)*10 & 11 Vict.  
c. 96.Court of  
Chancery  
may, upon  
application  
by majority  
of trustee,  
&c., order  
payment or  
transfer of  
trust monies,  
stocks, or  
securities  
into Court of  
Chancery.

WHEREAS difficulties have arisen in the transfer of securities vested in trustees in certain cases under the provisions of an act passed in the Session of Parliament holden in the tenth and eleventh years of the reign of Her present Majesty, intituled *An Act for better securing Trust Funds, and for the Relief of Trustees*, and it is expedient to make further provision for carrying into effect the objects of the said recited Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if upon any petition presented to the Lord Chancellor or Master of the Rolls in the matter of the said Act it shall appear to the Judge of the Court of Chancery before whom such petition shall be heard, that *any monies, annuities, stocks or securities (k)*, are vested in any persons as trustees, executors, or administrators, or otherwise, upon trusts within the meaning of the said recited Act, and that the *major part* of such persons *(l)* are desirous of transferring, paying, or delivering the same to the Accountant-General of the High Court of Chancery under the provisions of the said recited Act, but that for any reason the concurrence of the other or others of them cannot be had *(m)*, it shall be lawful for such Judge as aforesaid to order and direct such transfer, payment, or delivery to be made by the *major part* of such persons without the

[*(k)* Under these words the debenture stock of a Railway Company, the consolidated stock of a Railway Company, and India 4 per Cent. stock have been ordered into Court; *Re Gledstane's Trusts*, W. N. 1878, p. 26.]

[*(l)* Where of three trustees, one was invalided and two petitioned, the Court made the order; *Re Broadwood's Trust*, 8 L. T. N. S. 632.

[*(m)* The non-concurring trustee must be served with any petition under the Act.



concurrence of the other or others of them ; and where any such monies or Government or Parliamentary securities shall be deposited with any banker, broker, or other depository, it shall be lawful for such Judge as aforesaid to make such order for the *payment or delivery* of such monies, Government or Parliamentary securities to \*the *major part* of such trustees, execu- [\* 1008] tors, administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Accountant-General as to the said Judge shall seem meet; and every *transfer* of any annuities, stocks, or securities, and every *payment* of money or *delivery* of securities, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the Act of *all the persons* entitled to the annuities, stocks, or securities so transferred, or the monies or securities so paid or delivered respectively, and shall fully protect and indemnify the Governor and Company of the Bank of *England*, the *East India* Company, and the *South Sea* Company, and all other persons acting under or in pursuance of such order.

By 28 & 29 Vict. c. 99, s. 1, it is enacted, that the County Courts shall have and exercise all the power and authority of the High Court of Chancery "in all proceedings under the Trustees Relief Acts, in which the trust estate or fund to which the proceeding relates shall not exceed the amount or value 500*l*."

And by 30 & 31 Vict. c. 142, s. 24, it is enacted, that "any monies, annuities, stocks, or securities vested in any persons as trustees, executors, administrators or otherwise, upon trusts, within the meaning of" (the Trustee Relief Act), "where the same does not exceed in amount or value of the sum of 500*l*., upon the filing by such trustees or other persons, or the major part of them, to or with the Registrar of the County Court within the district of which such persons or any of them shall reside, an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge, may in the case of money be paid into a *Post-Office Savings Bank* established in the town in which the County Court is held, in the name of the Registrar of such Court, in trust, to attend the orders of the Court," and "in the case of stocks or securities may be transferred or deposited into or in the name of the *Treasurer and Registrars* of such Court, in trust, to attend the order of the Court," &c.

## TRUSTEE ACT, 1850.

13 &amp; 14 VICT. CAP. 60.

*"An Act to Consolidate and Amend the Laws relating to the Transfer of Real and Personal Property vested in Mortgages and Trustees."* (5 August, 1850.)

WHEREAS an Act was passed in the first year of the reign of His late Majesty King William the Fourth, intituled *An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give effect to their Decrees and Orders in certain cases*: And whereas an Act was passed in the fifth year of the reign of His late Majesty King William the Fourth, intituled *An Act for the Amendment of the Laws relative to Escheats and Forfeitures of Real and Personal Property holden in Trust*: And whereas an Act was passed in the second year of the reign of Her present Majesty, intituled *An Act to remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees*: And whereas it is expedient that the provisions of the said Acts be consolidated and enlarged,—Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same (z).

I. (*This section was repealed by "The Statute Law Revision Act, 1875."*)

Interpreta-  
tion of terms.

II. And, whereas it is expedient to define the meaning in which certain words are hereafter used: It is declared that the several words hereinafter named are herein used and applied in the manner following respectively: (that is to say),

The word "lands" shall extend to and include man-  
[ \* 1010 ] ors, messuages, \* tenements, and hereditaments, corporeal and incorporeal, of every ten-

(z) The Court has no jurisdiction under the Trustee Acts to decide on a disputed question of title; *Re Draper's Settlement*, 9 W. R. 805.

ure or description, whatever may be the estate or interest therein (a):

The word "stock" shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein (b):

The word "seised" shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity (c), in possession or in futurity, in any lands:

The word "possessed" shall be applicable to any vested estate less than a life estate, at law or in equity, in possession or in expectancy, in any lands:

The words "contingent right," as applied to lands, shall mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

The words "convey" and "conveyance" applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seised, or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of an Act passed in the fourth year of the reign of His late Majesty King *William* the Fourth, intituled *An Act for the abolition of Fines and Re-*

---

(a) In one case, where the words "lands" only was used in the vesting order, and the property comprised *rent-charges*, the order was amended by adding the word "hereditament;" *Re Harrison*, 1 Set. on Dec. 516, 4th edit.

(b) The word stock includes shares in *joint-stock companies*; *Re Angelo*, 5 De G. & Sm. 278; and shares in ships, 18 & 19 Vict. c. 91, s. 10.

(c) In suits where all parties beneficially interested are before the Court, it is sufficient for the purchaser to take a conveyance of the *legal* estate, for the equities of the parties are bound by the order of sale, and no vesting order as to the *equitable estate* is required or will be made; *Re Williams' Estate*, 5 De G. & Sm. 515. See the analogous case under the prior Act, *Goddard v. Macaulay*, 6 Ir. Eq. Rep. 221.

coveries, and the substitution of more simple modes of Assurance (z), and including also surrenders and other acts which a tenant of customary or [\* 1011] copyhold lands can himself perform \* preparatory to or in aid of a complete assurance of such customary or copyhold lands (a):

The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed or for any less estate:

The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another:

The words "Lord Chancellor" shall mean as well the Lord Chancellor of *Great Britain* as any Lord Keeper or Lords Commissioners of the Great Seal for the time being:

The words "Lord Chancellor of *Ireland*" shall mean as well the Lord Chancellor of *Ireland* as any Keeper or Lords Commissioners of the Great Seal of *Ireland* for the time being:

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage (b); but, with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts (c), and shall extend to and include

(z) Thus, where there is an adult tenant for life with remainder to an infant *tenant in tail* with remainders over, a vesting order of the infant's estate with the consent of the tenant for life as protector will bar the entail, and all remainders over; *Powell v. Matthews*, 1 Jur. N. S. 973; see form of order, 1 Set. on Dec. p. 535, 4th edit.

(a) See, as to copyholds, *Rowley v. Adams*, 14 Beav. 130, and *past*, p. 1025, note (a).

(b) As to the question upon the former Act, 1 W. 4, c. 60, whether the word "trust" included a "mortgage," see note (c), p. 836, 3rd edit.

(c) A *vendor*, after a contract, has been held to be a trustee of shares in a *joint-stock bank* for the purchaser; *Re Angelo*, 5 De G. & Sm. 278. But in cases of *real estate*, if not universally, at least where the alleged trustee can possibly dispute the trust, the constructive trust must first have been declared by the decree of the Court, and the infant heir of the vendor who died intestate after having contracted to sell real estate is not a constructive trustee for the purchaser unless so declared by decree; *Re Carpenter*, 1 Kay 418; *Re Burt*, 9 Hare, 289; *Re Dickenson*, 17 L. T. 231; *Cust v. Middleton*, 7 Jur. N. S. 151; *Re Weeding's Estate*, 4 Jur. N. S. 707; *Re Faulder*, W. N. 1866, p. 83; *Jackson*

## cases \* where the trustee had some ben. [ \* 1012 ]

*v. Milfield*, 5 Hare, 538; *Re Milfield*, 2 Ph. 254; *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582.] *Re Wise*, 5 De G. & Sm. 415, is distinguishable; and see *Re Propert's Purchase*, 22 L. J. N. S. Ch. 948. But where a vendor died before acceptance of the title having devised the estate to an infant, and the executors prayed that the infant might be declared a trustee within the Act, and that the property on payment of the purchase-money might be conveyed to the purchaser who had accepted the title, and the prayer was supported by the infant's counsel, the Court made the order; *Re Lowry's Will*, 15 L. R. Eq. 78. [This point is, however, not likely to arise in the future in the case of freeholds, as by the Conveyancing and Law of Property Act, 1881, s. 4, the personal representative of the vendor is empowered to convey, where at his death an enforceable contract is subsisting.]

If the owner of *copyholds* covenant to surrender, and declares that in the meantime he will stand seised upon *trust* for the covenantee, the covenantor is a trustee within the Act; *Re Collingwood's Trusts*, 6 W. R. 536; and see *Steele v. Waller*, 28 Beav. 466. And even where there is no such declaration, yet if the contract be not *in fieri*, but has been carried out and completed, the covenantor is a trustee within the Act; *Re Cuming*, 5 L. R. Ch. App. 72.

If the *cestui que trust* has sold his *equitable* interest, and the sale has been *completed*, the purchaser is then the *cestui que trust*, and may apply for a transfer of the legal estate; *Re Wilkinson's Trust*, 10 Jur. N. S. 716; *Re Groom*, 11 L. T. N. S. 336.

Where a testator had signed an agreement to convey certain easements in compromise of an action, an infant devisee, no title being in question, was held to be a constructive trustee within the Act; *Re Taylor*, W. N. 1866, p. 5.

Where a *compulsory* sale had been made to a railway company, and the purchase-money had been *paid* and *possession* taken in the lifetime of the ancestor, the case was held to be within the Act; *Re Russell's Estate*, 12 Jur. N. S. 224; and see *Re Badcock*, 2 W. R. 386.

A vendor who refused to convey after tender of a deed *settled by the judge*, or to receive the purchase-money, was declared a trustee, and on the purchaser paying his purchase-money into Court, his solicitor was to execute the conveyance for the vendor; *Warrender v. Foster*, 1 Set. on Dec. 438, 4th edit.

An executor holding a legacy bequeathed to persons successively is a constructive trustee; *Re Davis's Trusts*, 12 L. R. Eq. 214.

[An infant who is the sole beneficial owner of stock standing in his name, subject to a provision or direction for his maintenance which is vested in some other person, is a constructive trustee within the Act; *Gardner v. Cowles*, 3 Ch. D. 304.]

Where a *feme covert* is a trustee of stock, the *husband*, as the Bank acts upon his directions, is a constructive trustee within the Act; *Re Wood*, 7 Jur. N. S. 323. [See now 45 & 46 Vict. c. 75.]

An heir who takes by descent, but has bound himself on the doctrine of *election* to hold upon the trusts of the will, is a trustee within the Act; *Dewar v. Maitland*, 2 L. R. Eq. 834.

Three persons were appointed assignees of a bankrupt, and one of them resigned his office and went abroad, and his resignation was accepted by the creditors, and the Court held that the one who had resigned and gone abroad was a trustee within the Act; and an order was made for vesting the legal estate in the two acting assignees; *Re Joyce's Estate*, 2 L. R. Eq. 576; 12 Jur. N. S. 1015.

official interest or estate in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person (o):

The word "lunatic" shall mean any person who shall have been found to be a lunatic upon commission of inquiry in the nature of a writ *de lunatico inquirendo*:

The expression "person of unsound mind" shall mean any person *not an infant*, who, not having been found to be a lunatic, shall be incapable from infirmity of mind (p) to manage his own affairs:

The word "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person not an heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

The word "mortgage" shall be applicable to every estate, interest, or property in lands or personal estate which would in a Court of equity be deemed merely a security for money:

The word "person" used and referred to in the mass [ \* 1013 ] culine gender shall \* include a female as well as a male, and shall include a body corporate (q):

And generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall extend to a female.

Power to  
make vesting  
order as to

III. And be it enacted, that when any *lunatic* or person of unsound mind (r) shall be seised or possessed

[ (o) A trustee may by virtue of this definition be appointed to perform the duties of an executor; *Re Moore*, 21 Ch. D. 778.]

(p) See *Re Wakeford*, 1 Jon. & Lat. 2 (under 1 W. 4, c. 60); *Re Jones*, 6 Jur. 545.

(q) By 25 & 26 Vict. c. 37, s. 10, the Trustee Act, 1850, is made to extend to a trustee or trustees of the *private estates* of Her Majesty, her heirs or successors, and any petition or other proceeding for obtaining the benefit of the Act shall be in the name or names of any person or persons authorized by any writing under the sign manual.

(r) Where the unsoundness of mind is *contested*, the case is not within the Act; *Re Walker*, Cr. & Ph. 147; *Re Campbell*, 18 L. T. 202.

of any lands upon any trust (s) or by way of mortgage (t), lands of a lunatic trustee or mortgagee. it shall be lawful for the Lord Chancellor (u), intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, to make an order that such lands be \*vested (v) in such a person or persons (w) in such manner and for such estate

(s) See definition of Trust, p. 1011.

(t) See definition of Mortgage. *ante*, p. 1012. [*Semble*, that the Court has no jurisdiction under this section to make an order for the transfer of a mortgage vested in a lunatic. The lunatic's interest may, however, be sold under sect. 116 of the Lunacy Regulation Act, 1853; *Re Brown*, 50 L. T. N. S. 373.]

(u) It was doubted whether the Lords Justices, though they were in fact intrusted under the Queen's sign manual with the care, &c., of lunatics, had power to exercise the jurisdiction given by the Act to the Lord Chancellor intrusted, &c.; *Re Waugh's Trust*, 2 De G. M. & G. 279; *Re Pattinson*, 21 L. J. N. S. Ch. 280. See, however, 15 & 16 Vict. c. 87, s. 15, removing the doubt, and the 11th section of the Trustee Extension Act, *post*, p. 1044. [This jurisdiction of the Lords Justices is now, by the 7th section of 38 & 39 Vict. c. 77, exercisable by such of the Judges of the High Court of Justice or Court of Appeal as are intrusted by the Queen's sign manual with the care, &c. of lunatics].

In cases of *lunacy* or *unsoundness of mind*, the application must be made exclusively to the Judges so intrusted as aforesaid, as the other Judges have no jurisdiction; *Jeffryes v. Drysdale*, 9 W. R. 423; *Re Ormerod*, 3 De G. & J. 249, and cases there cited; and see *Re Irby*, 17 Beav. 334; *Herring v. Clark*, 4 L. R. Ch. App. 167; *Re Mason*, 10 L. R. Ch. App. 273; *Re Stamper*, 46 L. T. N. S. 372.]

As the section speaks of *conveyance* and *assignment*, the Court has no authority under it to vest a power though an imperative one; *Re Porter's Will*, 3 W. R. 583. See *post*, 1031.

[Where the person of unsound mind is tenant in tail, it is not necessary in the vesting order to refer to the Fines and Recoveries Act, or to the manner in which the trustee could have conveyed if sane. The order should simply direct the property to vest for all the estate which the person of unsound mind could convey if sane; *Mason v. Mason*, 7 Ch. D. 707.]

Where one of several trustees is a *lunatic*, and it is desired to obtain from the Court an appointment of new trustees in the place of the lunatic and others with a vesting order, the petition should be intituled in Lunacy and in the Chancery Division; *Re Pearson*, 5 Ch. D. 982; *Re Chell*, 49 L. T. N. S. 196; *Re Davidson*, 20 L. J. N. S. Ch. 644. And see Trustee Extension Act, sect. 10.

As to a person "of unsound mind," who is an *infant*, see p. 1015, *post*, note (c).

As to the parties to be served, see p. 1033, *post*, note (c).

(v) The vesting order being a *conveyance*, should be so worded as to make it clear by the description what property passes; *Re Ord's Trust*, 3 W. R. 386.

Where the circumstances require a severance of the property, the Court will make two vesting orders instead of one general one; *Brader v. Kerby*, W. N. 1872, p. 174.

[(w) The Court will not on the petition of a person absolutely entitled vest the property in the person so entitled, but will ap-

as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment (x) of the lands in the same manner for the same estate (y).

Power to discharge any contingent right or a lunatic trustee or mortgagee in respect of lands.

IV. And be it enacted, that when any *lunatic* or person of unsound mind shall be entitled to any *contingent right* in any *lands* upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, *intrusted as aforesaid*, to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Lord Chancellor shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

Power to vest stock or chose en action of a lunatic trustee or mortgagee.

V. And be it enacted, that when any *lunatic* or person of unsound mind shall be *solely* entitled to any *stock* or to any *chose en action* upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, *intrusted as aforesaid*, to make an order vesting in any person or persons (z) the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such *chose en action*, or any interest in respect thereof (a), and when any person or persons shall be entitled *jointly* with any lunatic or person of unsound mind to any *stock* or *chose en action* upon any trust or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the right to transfer such stock, or to receive

point a new trustee and vest the property in him, leaving the petitioner to take further steps to put an end to the trust. *Re Holland*, 16 Ch. D. 672; but see *Re Currie*, 10 Ch. D. 93.]

(x) See definition of Conveyance and Assignment, pp. 1010, 1011.

(y) As to Costs, see sect. 51, and *post*, p. 1037, note (b).

[(z) The Court of Lunacy will not under this section make an order vesting the right to transfer the stock in the persons beneficially entitled to it, as that would in effect be an administration of the trust in Lunacy which the Court always refuses, but on a petition intitled in the Chancery Division as well as in Lunacy the Court will appoint the beneficiaries new trustees of the settlement, and vest the right in them in that capacity; *Re Currie*, 10 Ch. D. 93.]

(a) Where a person of unsound mind was entitled to a sum of stock as trustee, and also entitled to another sum of the same stock beneficially, as the bank would not *apportion* the past *dividend* between the trust estate and the beneficial estate, the Court in appointing new trustees vested the right to receive the whole dividend in the new trustees upon their undertaking that they would invest in the name of the old trustee so much as belonged to him beneficially; *Re Stewart*, 2 De G. F. & J. 1; [see *Hodges v. Wheeler*, 1 Set. on Dec. 4th edit. 522.]



the dividends or income thereof, \*or to sue for [ \* 1015 ] and recover such *chose en action*, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid (b), or in such last-mentioned person or persons, together with any other person or persons the said Lord Chancellor may appoint (c).

VI. And be it enacted, that when any *stock* shall be standing in the name of any deceased person whose personal representative is a *lunatic* or person of unsound mind, or when any *chose en action* shall be vested in any *lunatic* or person of unsound mind as the personal representative of a deceased person, it shall be lawful for the Lord Chancellor, *intrusted as aforesaid*, to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such *chose en action* or any interest in respect thereof, in any person or persons he may appoint.

Power to vest stock or *chose en action* of a person whose personal representative is a lunatic.

VII. And be it enacted, that where any *infant* (d), shall be seised or possessed of any *lands* upon any *trust* or by way of *mortgage*, it shall be lawful for the Court of Chancery (e) to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct (f), and the order

Power to vest lands of an infant trustee or mortgagee.

(b) See *Re White*, 5 L. R. Ch. App. 698; [*Re Wachter*, 22 Ch. D. 535, where, one of three executors of the surviving executor of a testator being of unsound mind, an order was made giving the right to transfer stock belonging to the estate of the original testator and still standing in his name. In *Re Nash*, 16 Ch. D. 503, where consols were standing in the names of three trustees one of whom was a lunatic, L. J. Cotton refused to make an order vesting the right to transfer until a new trustee had been appointed in the place of the lunatic. But the section clearly gives jurisdiction to vest the right in the other trustees without appointing a new trustee, and where there is no object to be attained by such appointment it will be dispensed with; *Re Watson*, 19 Ch. D. 384; and see *Re Ray*, 47 L. T. N. S. 500.]

(c) The lunatic husband of a *feme covert* a trustee is within the Act; *Re Wood*, 3 De G. F. & J. 125; and see *Ex parte Bradshaw*, 2 De G. M. & G. 900.

(d) A "person of unsound mind" is defined by the 2nd section to mean "any person *not an infant*, who, not having been found a lunatic, shall be incapable from infirmity of mind to manage his own affairs." And, therefore, where an infant trustee is of unsound mind the case does not fall under the lunacy jurisdiction of the Chancellor, but the ordinary jurisdiction in Chancery; *Re Arrowsmith's Trusts*, 4 Jur. N. S. 1123. And the infant need not be served with the petition; *Re Tweedy*, 9 W. R. 398; *Re Willan*, Ib. 689.

(e) As to the County Courts, see *post* p. 1045.

(f) It is now settled, notwithstanding the doubts entertained at first (see *Re Howard's Estate*, 5 De G. & Sm. 435), that the Court will make an order, vesting an estate on a purchase to the

[ \* 1016 ] shall have the same effect as if the \* infant trustee or mortgagee, had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate (g).

Power to discharge contingent right of infant trustee or mortgagee to lands.

VIII. And be it enacted, that where any infant shall be entitled to any *contingent right* in any *lands* upon any trust or by way of mortgage, it shall be lawful for the Court of Chancery to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly excepted a deed so releasing or disposing of the contingent right.

Power to vest lands of a

IX. And be it enacted, that when any person *solely* (h) seised or possessed of any lands *upon any trust* (i)

uses commonly called the uses to bar dower; but will not incorporate a declaration that no woman shall be entitled to dower; this being no part of the conveyance; but as to uses to bar dower have not that effect as to a woman married since Jan. 1, 1834, a woman so married will be entitled to dower unless otherwise barred; *Re Lush's Estate*, 5 De G. & Sm. 436; *Davey v. Miller*, 17 Jur. 908.

An order has been made to vest the legal estate in the devisees of a mortgagor, subject to a *charge* created by his will; *Re Ellenthorpe*, 18 Jur. 669.

Where the executor and executrix (a married woman) of a mortgagee applied for a vesting order, the Court, instead of vesting the property in the executor and executrix, when the *feme covert* in order to part with it would have to acknowledge the deed, vested it in such person or persons as the executor and executrix should appoint, and in default thereof, in the executor and executrix; *Re Powell*, 4 K. & J. 338.

(g) Tenant for life with remainder to an infant *in tail*. A vesting order as to the estate of the infant with the consent of the tenant for life, will bar the entail and remainders over; *Powell v. Matthews*, 1 Jur. N. S. 973. See the interpretation clause as to the words "convey," and "conveyance."

(h) [It has been held] that a coparcener who has no beneficial interest, but holds in trust for the other coparcener, is solely seised as trustee for such coparcener; *McMurray v. Spicer*, 5 L. R. Eq. 527; [but see *Re Greenwood's Trusts*, 27 Ch. D. 359].

(i) An heir who takes the trust estate by the *disclaimer* of the trustees, *Wilks v. Groom*, 6 De G. M. & G. 205, [or by the death of the trustee in the testator's lifetime, *Re Gill*, 1 Set. on Dec. 4th edit. 520,] is a trustee within the section. And an heir of a mortgagee who had taken possession has been held to be a trustee for the mortgagee's executors; *Re Skitter's Mortgage*, 4 W. R. 791; see *post*. 1019, note (b); [and see 44 & 45 Vict. c. 41, s. 30.]

A person had contracted to sell an estate which in equity had converted it into personalty. but before he executed the conveyance died intestate, and it was held that the heir was a trustee for the personal representative; *Re Badcock*, 2 W. R. 386. See *ante*, p. 1011, note (c); [and see 44 & 45 Vict. c. 41, s. 4.]

shall be out of the jurisdiction of the Court of Chancery (*k*), or cannot be found (*l*), it shall be lawful for the said Court (*m*) to make an order vesting such lands in such person or \* persons in such manner [ \* 1017] and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

X. And be it enacted, that when any person or persons shall be seised or possessed of any lands jointly (*n*) with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, it shall be lawful for the said Court to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee (*o*) out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner for the same estate (*p*).

sole trustee out of the jurisdiction.  
  
Power to vest lands of a joint trustee out of the jurisdiction.

(*k*) A temporary absence, as where the captain of a merchantman was abroad on a voyage, is not within the Act; *Hutchinson v. Stephens*, 5 Sim. 499 (a case under the old Act, 11 G. 4 & 1 W. 4, c. 60.) [A trustee may be treated as out of the jurisdiction, although he appears by counsel; *Stillwell v. Ashley*, 1 Set. on Dec. 4th edit. 520.]

(*l*) A defendant against whom an absolute decree of foreclosure upon an equitable mortgage was made, but who could not be found, was deemed to be a trustee for the mortgagee within the Act, and a vesting order was made accordingly; *Lechmere v. Clamp*, 30 Beav. 218; 31 Beav. 578. See p. 1026, *post*, note (*e*).

[One of three joint mortgagees, who were trustees, refused to concur in a transfer of the mortgage which was executed by the other mortgagees; a new trustee was afterwards appointed in his place, and on a petition for a vesting order, it was held that he was a trustee within the meaning of the Act for the transferee of mortgage; *Re Walker's Mortgage Trusts*, 3 Ch. D. 209.]

[(*m*) This section applies where the trustee out of the jurisdiction is of unsound mind; *Re Gardner's Trusts*, 10 Ch. D. 29.]

[(*n*) The words "seised jointly" are not limited to a legal joint tenancy but are used in a wide sense, and apply to the case of lands descending to the co-heiress and the surviving heir or (if the case fall within sect. 30 of the Conveyancing and Law of Property Act, 1881) the personal representative of a deceased co-heiress of the deceased trustee; *Re Greenwood's Trusts*, 27 Ch. D. 359; *Re Templer's Trusts*, 4 N. R. 494; but see *McMurray v. Spicer*, 5 L. R. Eq. 527.]

(*o*) The word "trustee" does not include a joint mortgagee. One of the mortgagees being out of the jurisdiction, the mortgage money was paid to the joint account of the joint mortgagees, but the Court refused to make an order; *Re Osborn's Mortgage*, 12 L. R. Eq. 392.

(*p*) The concluding words of this section (as a conveyance by

Power to discharge contingent right of sole trustee out of the jurisdiction to lands.

XI. And be it enacted, that when any person *solely* entitled to a *contingent right* in any lands upon any *trust* shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

Power to discharge contingent right of joint trustee out of the jurisdiction to lands.

XII. And be it enacted, that when any person *jointly* entitled with any other person or persons to a *contingent right* in any *lands* upon any *trust* shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction or who cannot be found, to the person or persons so jointly entitled as aforesaid, [\*1018] \*or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

Power to vest lands held upon trust where it is unknown which of the co-trustees survived.

XIII. And be it enacted, that where there shall have been two or more persons jointly seised or possessed of any *lands* upon any *trust*, and it shall be uncertain *which of such trustees was the survivor*, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Where it is unknown whether the

XIV. And be it enacted, that where any one or more person or persons shall have been seised or possessed of

one of several trustees would have the effect of severing the joint tenancy) led to a doubt at one time whether the Court had power under this section to vest the lands in the joint owner within the jurisdiction and another as *joint tenants*; *Re Watt's Settlement*, 9 Hare, 106; *Re Plyers' Trust*, *Ib.* 220. But the doubt has since been dispelled; *Smith v. Smith*, 3 Drew. 72; *Re Marquis of Bute's Will*, *Johns.* 15.

If one of the *co-heirs* of a mortgagee be out of the jurisdiction, he is a trustee within the 10th section of the Act for the persons entitled to the mortgage money, and the entirety on their petition may be vested in the co-heir within the jurisdiction; *Re Templer's Trusts*, 4 N. R. 494; and see *Re Hughes' Settlement*, 2 H. & M. 695. See p. 1019, note (b).

any *lands* upon any *trust*, and it shall not be known, as to the trustee last known to have been seised or possessed, *whether he be living or dead*, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

XV. And be it enacted, that when any person seised of any *lands* upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known *who is his heir or devisee*, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner for the same estate (q).

XVI. And be it enacted, that when any *lands* are subject to a *contingent right* in an unborn person or class of unborn persons who upon coming into existence would in respect thereof become seised or possessed of such lands upon any *trust*, it shall be lawful for the Court of Chancery to make an order which shall wholly release and discharge \* such lands from such [ \* 1019 ] contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would upon coming into existence be seised or possessed of in such lands.

(q) This section does not apply to *leaseholds for years*; *Re Mundel's Trust*, 8 W. R. 683; *Re Harvey*, Set. on Dec. 520, 4th edit. But a vesting order as to leaseholds for years may be made on the appointment of new trustees under the 34th section; *Re Driver's Settlement*, 19 L. R. Eq. 352; *Re Rathbone*, 2 Ch. D. 483; *Re Dalglish's Settlement*, 4 Ch. D. 143, reversing S. C. 1 Ch. D. 46; *Re Mundel's Trust*, 6 Jur. N. S. 880; *Re Matthews' Settlement*, 2 W. R. 85. See, however, *Re Robinson's Will*, 9 Jur. N. S. 885.

[An order vesting the property in a person absolutely entitled can be made under this section; *Re Godfrey's Trusts*, 23 Ch. D. 205.

Now that by 44 & 45 Vict. c. 41, s. 30, trust estates devolve upon the legal personal representatives as if they were chattels real, it is conceived that this section has ceased to have any application to lands held by a trustee dying after the 31st December, 1881.]

XVII. and XVIII.—(*These sections were repealed by the Extension Act. See post, p. 1041.*)

Power to make vesting orders as to legal estates derived from a mortgagee who has not entered into possession.

XIX. And be it enacted, that when any person to whom any lands have been conveyed by way of mortgage shall have died, *(r)* without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last mentioned person shall consent to an order for the reconveyance of such lands *(s)*, then in any of the following cases it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; that is to say:

When an heir or devisee *(t)* of such mortgage shall be out of the jurisdiction of the Court of Chancery or cannot be found:

When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed *(u)* for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

*[(r)* Where the death has occurred since the 31st December, 1881, it is now unnecessary to have recourse to this section, see 44 & 45 Vict. c. 41, s. 30.]

*(s)* The personal representative of a mortgagee who had not taken possession, or the assignee of the representative, may obtain an order vesting the legal estate, which has descended to the heir, notwithstanding the word "reconveyance" points in strictness to a conveyance to the mortgagor; *Re Boden's Trust*, 1 De G. M. & G. 57; 9 Hare, 820; *Re Quinlan's Trust*, 9 Ir. Ch. Rep. 306; *Re Lea's Trust*, 6 W. R. 482; overruling *Meyrick's Estate*, 9 Hare, 116; and see *Re Hewitt*, 27 L. J. N. S. Ch. 302.

If the mortgagee died intestate, and was illegitimate, the Court will make the vesting order on service of the petition on the Crown; *Re Minchin's Estate*, 2 W. R. 179.

If the mortgagee had taken possession, the executors of the mortgagee may obtain an order for vesting in them the legal estate, which has descended to the heir, under the 9th section; *Re Skitter's Trusts*, 4 W. R. 791; or under the 15th section, *Re Keeler*, 11 W. R. 62.

*(t)* See the interpretation clause, p. 1012, *ante*, as to the meaning of the word "devisee."

*(u)* As to the instrument to be tendered in the case of copyholds, see *Rowley v. Adams*, 14 Beav. 130, where the question arose upon the 17th section, since repealed.

When it shall be uncertain *which of several devisees* of such mortgagee was the *survivor*:

When it shall be uncertain as to the *survivor* of several devisees of \* such mortgagee, or as [\* 1020] to the *heir* of such mortgagee *whether he be living or dead*:

When such mortgagee shall have died intestate as to such lands, and *without an heir*, or shall have died and it *shall not be known who is his heir or devisee*:

And the order of the said Court of Chancery made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

XX. And be it enacted, that in every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be (*v*), should it be deemed more convenient, to *make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right*: and the conveyance or assignment, or release or disposition, of the person so appointed (*w*), shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order of the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, would in the particular case have had under the provisions of this Act. And in every case where the Lord Chancellor, intrusted as

Power, instead of making a vesting order, to appoint a person to execute the requisite conveyance, assignment, or release of lands, and to direct the Secretary, Deputy Secretary, or Accountant-General of the Bank of England or other company to transfer the stock in question

(*v*) In the case of an *infant* trustee being a "*person of unsound mind*," the case falls, not under lunacy, but under the ordinary jurisdiction of the Court; *Re Arrowsmith's Trusts*, 4 Jur. N. S. 1123; see p. 1015, *ante*, note (*e*).

(*w*) The conveyance should contain a recital showing that it is made in obedience to the order of the Court, and should be executed by the *person appointed to convey in his own name*; though the late Vice-Chancellor of England in a case arising upon the 1 W. 4, c. 60, seems to have considered that the execution by the person appointed to convey, of a deed purporting to be the conveyance of the trustee who refused, would, with a mere reference in the attestation clause to the order appointing the person to convey, be sufficient; *Ex parte Foley*, 8 Sim. 395.

aforesaid, or the Court of Chancery, shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any *stock* transferable in the books of the Governor and Company of the Bank of *England*, or of any other company or society established or to be established, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, if it be deemed more convenient, to make an order directing the Secretary, Deputy Secretary, or Accountant General for the time being of the Governor and Company of the Bank of *England*, or any officer of such other company or society, at once to transfer or join in transferring the stock to [ \* 1021 ] the person or persons to be named in \* the order (x); and this Act shall be a full and complete indemnity and discharge to the Governor and Company of the Bank of *England*, and all other companies or societies, and their officers and servants, for all acts done or permitted to be done pursuant thereto (y).

The same powers given to the Duchy Chamber of Lancaster and the Courts of Chancery of the counties palatine of Lancaster and Durham as to lands within their respective jurisdictions as are given by the Act to the Court of Chancery.

XXI. And be it enacted, that as to any lands situated within the Duchy of *Lancaster* or the counties palatine of *Lancaster* or *Durham*, it shall be lawful for the Court of the Duchy Chamber of *Lancaster*, the Court of Chancery in the county palatine of *Lancaster*, or the Court of Chancery in the county palatine of *Durham*, to make a like order in the same cases as to any lands within the jurisdiction of the same Courts respectively as the Court of Chancery has under the provisions hereinbefore contained been enabled to make concerning any lands; and every such order of the Court of the Duchy Chamber of *Lancaster*, the Court of Chancery in the county palatine of *Lancaster*, or the Court of Chancery in the county palatine of *Durham*, shall, as to such lands, have the same effect as an order of the Court of Chancery: provided always that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery shall be deemed by such local Courts to be an

---

(x) The person here meant is not a beneficiary, but where a person has become absolutely entitled, the Court can appoint him a trustee, and direct a transfer to him; *Re Dickson's Settlement*, 27 L. T. N. S. 671; 21 W. R. 220; [and see *Re Currie*, 10 Ch. D. 93.]

(y) The Court under this section can only direct the bank officer to transfer in the place of the person creating the difficulty, and therefore where the stock was standing in the names of two persons, one of whom was out of the jurisdiction, it was necessary to order the person within the jurisdiction to join in the transfer; *Wade v. Hopkinson*; *Hodgson v. Hodgson*, 1 Set. on Dec. 521, 4th edit.



absent trustee or mortgagee within the meaning of this Act (z).

XXII. And be it enacted, that when any person or persons shall be *jointly* entitled with any person *out of the jurisdiction* of the Court of Chancery (a), or who *cannot be found*, or concerning whom it shall be *uncertain whether he be living or dead*, to any *stock or chose en action* upon any *trust* (b), it shall be lawful for the said Court (c), to make an order \* vesting the right [ \* 1022 ] to transfer such stock, or to receive the dividends or income thereof (d), or to sue for or recover such *chose en action*, or any interest in respect thereof, either in *such person or persons so jointly entitled* as aforesaid, or in *such last-mentioned person or persons together with any person or persons* the said Court may appoint (e);

(z) This section does not (nor does 17 & 18 Vict. c. 82), enable the provincial Courts to make orders in *lunacy*; *Re Ormerod*, 3 De G. & J. 249.

(a) Where the trustee out of the jurisdiction is incapacitated from *lunacy* or *infancy*, the power of the Court must be sought for in the sections applicable to cases of lunatics and infants, and not in this section. Consequently, in a case arising before the Trustee Extension Act (see 3rd section), the Court had no authority to make a vesting order with respect to stock held by an infant trustee out of the jurisdiction; *Cramer v. Cramer*, 5 De G. & Sm. 312.

The order should recite the fact that the trustee is out of the jurisdiction; *Re Mainwaring*, 26 Beav. 172.

As to what will amount to being out of the jurisdiction, see *ante*, p. 1016, note (d).

(b) The *husband* of an executrix is a trustee within the Act; *Ex parte Bradshaw*, 2 De G. M. & G. 900; and see *Re Wood*, 3 De G. F. & J. 125. [But see now 45 & 46 Vict. c. 75, ss. 1, 2, 5, 18.]

(c) If the Court be asked to transfer the stock to new trustees appointed under a *power*, it must first be satisfied of the fitness of the persons proposed, and all parties interested must be served; *Re Maynard's Settlement*, 16 Jur. 1084. See p. 1030, note, and p. 1033, note (c).

(d) Of four trustees of stock one was out of the jurisdiction, and M. R., without disturbing the capital, vested the right to receive the dividends in the three trustees. The Bank appealed from this, on the ground that the section did not authorize an unlimited severance of the dividends from the capital, and the L. J.J. confined the order to the dividends to accrue during the lives of the *three* trustees; *Re Peyton's Settlement*, 2 De G. & J. 290; 25 Beav. 317.

(e) Where the stock is vested in *two* trustees, one of whom is out of the jurisdiction, the Court has no authority under the first branch of the section to vest the right in the person who asks for it as being the *absolute owner*; *Re Brass's Trust*, 4 W. R. 764, but see *Ex parte Bradshaw*, 2 De G. M. & G. 900. It does not appear from the report what jurisdiction the Court had to make the order in *Re Ryan's Settlement*, 9 W. R. 137. The stock was standing in the names of two deceased trustees, and

and when any sole trustee (*f*) of any stock or chose en action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vested the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose en action, or any interest in respect thereof, in any person or persons the said Court may appoint.

When sole trustee of stock or a chose en action to transfer the stock, or receive the dividends, or recover the chose en action.

XXIII. And be it enacted, that where any sole trustee (*g*) of any stock or chose en action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose en action or any interest in respect thereof, according to the direction of the person absolutely entitled thereto (*h*), for the space of twenty-eight days next after a request in writing (*i*) for that purpose shall have been [\* 1023] made \* to him by the person absolutely entitled thereto, it shall be lawful for the Court of Chancery to make an order (*k*) vesting the sole right to transfer such stock, or to receive the dividends or income thereof (*l*), or to sue for and recover such chose en action,

the survivor of them had died intestate, and as letters of administration to him involved no inconvenience, but only expense, the case was not within the purview of the Act, except on the appointment of new trustees; see pp. 1028, note (*a*), and 1031, note (*e*).

(*f*) A. and B. being trustees, the Master found that it was uncertain whether A. was living or dead, but that B. was living. Afterwards B. died. Held that A. was not a sole trustee within the meaning of the 22nd section, as he was not originally the sole trustee; *Re Randall's Will*, 1 Drew. 401.

(*g*) Sole trustee may mean the whole number of the co-trustees; see interpretation clause, *ante*, p. 1013. *Re Hartnall*, 5 De G. & Sm. 111; [*Re Hyatt's Trusts*, 21 Ch. D. 846.] See *Re Spawforth's Settlement*, 12 W. R. 978, in which case the order was refused, but it does not appear whether because the request was not in writing, or, which is more likely, because the petitioner's title was disputed.

(*h*) A tenant for life is not a person absolutely entitled within the meaning of the Act, except for the purpose of an application limited to the income only; nor is one of two trustees; *Mackenzie v. Mackenzie*, 5 De G. & Sm. 338; more fully reported 16 Jur. 723. But persons duly appointed new trustees are "absolutely entitled"; *Ex parte Russell*, 1 Sim. N. S. 404; *Re Baxter's Will*, 2 Sm. & G. App. v.; *Re Ellis's Settlement*, 24 Beav. 426.

(*i*) The case of a trustee refusing to obey the order of the Court was not within this section: *Mackenzie v. Mackenzie*, 5 De G. & Sm. 338. But see now sect. 4 of the Trustee Extension Act.

(*k*) As to the person to be served under this and the following section, see *post*, 1033, note (*e*).

(*l*) The Court cannot, under this section, make any order as to dividends accrued due subsequently to the date of the request,

or any interest in respect thereof, in such person or persons as the said Court may appoint.

XXIV. And be it enacted, that where any one of the trustees of any stock or chose en action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose en action according to the directions of the person absolutely entitled thereto, for the space of twenty-eight days, next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose en action, in the other trustee or trustees of the said stock or chose en action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees (m).

When one of several trustees of stock or a chose en action refuses to transfer the stock or receive the dividends, or recover the chose en action.

XXV. And be it enacted, that when any stock shall be standing in the sole name of a deceased person, and his or her personal representative shall be out of the jurisdiction of the Court of Chancery, or cannot be found (n), or it shall be uncertain whether such personal representative be living or dead, or such personal representative (o) shall neglect or refuse to transfer such stock, or receive the dividends or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the Court of Chancery to make an order

When stock is standing in the name of a deceased person, and the personal representative is out of the jurisdiction, or cannot be found, or it is not known whether he is living or dead, or refuses to transfer or receive the dividends.

and à fortiori not as to prospective dividends; Re Hartnall, 5 De G. & Sm. 111. See now sect. 4 of Extension Act.

(m) See Re White, 5 L. R. Ch. App. 698.

[(n) Where stock was standing in the names of two original trustees (both deceased), and the survivor of them had died intestate, and there had never been any representation taken to his estate, but new trustees had been appointed under a power, the Court reappointed the new trustees, and made an order vesting the right to call for a transfer of and to transfer the stock in the new trustees; Re Crowe's Trusts, 14 Ch. D. 304, 610; and see Re Hilliard's Settlement Trust, 42 L. T. N. S. 79.]

(o) This enactment applies where the executor of a surviving trustee has not proved, and declines to say whether he intends doing so, and has neglected to transfer; Re Ellis's Settlement, 24 Beav. 426; [and where the executor of the executor of the last surviving trustee refuses to prove; Re Price's Settlement, W. N. 1883, p. 202]; and see under 1 W. 4, c. 60; Cockell v. Pugh, 6 Beav. 293; Re Lunn's Charity, 15 Sim. 464; and the Court seems to have made a similar order when the next of kin who was entitled to take out administration had refused to make the transfer; Re Stroud's Trusts, W. N. 1874, p. 180.

Vesting order as to stock confers a right to transfer the stock and receive the dividends and indemnifies companies and persons acting in obedience to such order.

vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.

[\*1024] \* XXVI. And be it enacted, that where any order shall have been made under any of the provisions of this Act vesting the right (*p*) to any stock in any person or persons appointed by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise (*q*), or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order; and the Bank of *England*, and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said Bank of *England*, or such companies, associations or persons, would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the Lord Chancellor, intrusted as aforesaid, or of the Court of Chancery, concerning any stock, shall have been given, it shall not be lawful for the Bank of *England*, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.

Effect of vesting order as to chose en action.

XXVII. And be it enacted, that where any order shall have been made under the provisions of this Act, either by the Lord Chancellor, intrusted as aforesaid or by the Court of Chancery, vesting the legal right to

(*p*) See sect. 6 of the Trustee Extension Act, and p. 1043, note (*b*), *post*.

[(*q*) See *Re Peacock*, 14 Ch. D. 212; where the order was made so as to vest in the new trustees the right to call for a transfer of the funds to themselves or to any purchaser or purchaser.]

sue for or recover any *chose en action* or any interest in respect thereof in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such *chose en action*, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such *chose en action*.

XXVIII. And be it enacted, that whensoever under any of the provisions of this Act, an order shall be made, either by the Lord Chancellor, \*in- [\* 1025] trusted as aforesaid, or the Court of Chancery, vesting any *copyhold* or customary lands in any person or persons, and such order shall be made with the *consent (r)* of the lord or lady of the manor whereof such lands are holden, then the lands shall, *without any surrender or admittance* in respect thereof, vest accordingly; and whenever, under any of the provisions of this Act, an order shall be made either by the Lord Chancellor, in- trusted as aforesaid, or the Court of Chancery, *appointing any person or persons to convey or assign any copyhold* or customary lands, it shall be lawful for such person or persons to do all acts and execute all instruments for the purpose of completing the assurance of such

In the case of copyholds, the Court may, with the consent of the lord, vest the lands or appoint a person to make the necessary surrender.

(r) The Court has power *without the consent of the lord* to vest in the person nominated by the Court all such estate as was vested in the person in respect of whom the inconvenience to be remedied by the Court arises. Such an order does not affect the interests of the lord, and therefore the petition need not be served upon him. On the order being made, the person in whom the property is vested applies for admission as an ordinary surrenderee would have done. So instead of a *vesting* order, the Court, without the consent of the lord, may appoint a person to *convey* the copyholds, and then the person so appointed must surrender, and the surrenderee must be admitted. But to prevent circuitry, this section *allows* the lord to consent to a *vesting* order, and then the estate will vest without the necessity of any surrender or admission; *Paterson v. Paterson*, 2 L. R. Eq. 31; S. C. 35 Beav. 506; *Re Flitcroft*, 1 Jur. N. S. 418; *Re Hurst*, 1 Set. on Dec. 540, 4th edit.; *Re Hey's Will*, 9 Hare, 221, overruling *Cocper v. Jones*, 2 Jur. N. S. 59; *Re Howard*, 3 W. R. 605.

When on the death of a trustee the customary heir was out of the jurisdiction and the Court appointed a new trustee, the lord claimed two fines, one for the admission of the customary heir and another for the admission of the new trustee, but it was ruled that he could claim one fine only, viz., on the admission of the new trustee; *Bristow v. Booth*, 5 L. R. C. P. 80.

Where the lord consents, it may be by act *in pais*, without appearance in Court; *Ayles v. Cox*, 17 Beav. 585.

lands (s) ; and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor, and every other person, shall, subject to the customs of the manor and the usual payments, be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been made, being free from any disability, had duly done and executed such acts and instruments.

When a decree is made for sale of real estate for payment of debts, the legal owner shall be deemed a trustee within the Act, and the Court may discharge any, contingent right. In decrees for specific perform-

XXIX. And be it enacted, that when a decree shall have been made by any Court of equity directing the sale of any lands for the payment of the debts (t) of a deceased person, every person *seised* or *possessed* of such lands, or entitled to a *contingent right* therein as heir, or under the will of such deceased debtor, shall be deemed to be so *seised* or *possessed* or entitled, as the case may be, upon a trust within the meaning of this Act; and the Court of Chancery is hereby empowered to make [\* 1026] an \*order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person (u).

XXX. And be it enacted, that where any decree (v) shall be made by any Court of equity for the *specific performance* of a contract concerning any lands (w), or for the *partition* (x) or *exchange* of any lands, or gen-

(s) See 20th section, and see form of order appointing a person to complete the assurance of a copyhold estate; *Re Hey's Will*, 9 Hare, 221.

(t) A sale for payment of costs of suit was not within this Act; *Weston v. Filer*, 5 De G. & Sm. 608. But see now sect. 1 of the Trustee Extension Act, and *Wake v. Wake*, 17 Jur. 545.

(u) See such an order without a petition in *Wood v. Beetlestone*, 1 K. & J. 213. But see *Gough v. Bage*, 25 L. T. N. S. 738.

(v) See Trustee Extension Act, s. 1, which applies not only to a decree but to any order of the Court.

(w) See such an order under this Act and the Trustee Extension Act, in *Ex parte Mornington*, 4 De G. M. & G. 537. [In suits for the specific performance of a contract for a lease the Court has on several occasions made orders under this section appointing a person to convey, or vesting the interests of unborn persons; see *Hodgson v. Bower*, *Howell v. Palmer*, 1 Set. on Dec. 4th edit. pp. 529, 530; *Hall v. Hale*, 51 L. T. N. S. 226; but in *Grace v. Baynton*, 25 W. R. 506, the late M. R. expressed his opinion that in such a case the Court had no power either to appoint a person to convey in the place of a party refusing to execute the lease, or to make a vesting order.]

(x) In a *partition* suit, instead of giving an *infant* entitled to a share a day to show cause, the Court may declare him to be a trustee of such parts of the property as are allotted to other parties; *Bowra v. Wright*, 4 De G. & Sm. 265.

Where a *lunatic* was interested in an undivided share, and a partition was decreed with a declaration that the lunatic was a

erally when any decree shall be made for the conveyance or assignment of any lands (*y*), either in cases arising out of the doctrine of election or otherwise \* it shall be lawful for the said Court to declare that any of the parties of the said suit wherein such decree is made are trustees of such lands or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons (*z*) who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is

ance, partition, or exchange, or where any conveyance is directed by decree, the Court may declare persons born or unborn to be trustees within the Act, and make orders accordingly.

trustee within the Act, the L.JJ. authorized the committee of the estate to convey by an order made under the Trustee Act, and under 16 & 17 Vict. c. 70; *Re Bloomar*, 2 De G. & J. 88. But it has since been held that the L.JJ. have jurisdiction to make a vesting order under the Trustee Act; *Re Molyneux*, 4 De G. F. & J. 365.

(*y*) In a foreclosure suit by an equitable mortgagee, the Court in making an absolute decree for foreclosure and directing a conveyance, can add a declaration that the mortgagor is a trustee for the mortgagee, and make a vesting order; *Lechmere v. Clapp* (No. 2), 30 Beav. 218; S. C. (No. 3), 31 Beav. 578; [and in a recent case of an equitable mortgage, where the mortgagor had died having devised his estate to trustees upon trust for sale, and the trustees having disclaimed, the legal estate descended to the heir of the mortgagor, who was an infant and was made a defendant to a foreclosure action, the Court, in making the usual foreclosure decree, inserted a declaration that "in case the plaintiffs were not redeemed within six months, the infant should be a trustee for them within the Act, and that his mother, who was executrix of the mortgagor, should be ordered to convey on his behalf; *Foster v. Parker*, 8 Ch. D. 147; but where the mortgagor who had created an equitable mortgage by deposit died intestate, and the estate descended to the infant heir subject to the mortgage, the judgment directed the infant to convey when he attained twenty-one, and gave him a day to show cause; *Mellor v. Porter*, 25 Ch. D. 158. "This section applies to all cases where there is a judgment against an infant for an immediate conveyance, but this is not the form of a judgment for foreclosure in the case of an equitable," *per Kay*, *J. Mellor v. Porter*, *ubi sup.*] In another case the Court required a separate application to be made; *Smith v. Boucher*, 1 Sm. & G. 72.

In *Weston v. Filer*, 5 De G. & Sm. 608, where an estate had been ordered to be sold for payment of costs, there was no decree for a conveyance, so that the case was not within the section; and V. C. Parker considered that it could not be deemed a case of constructive trust, but as to which see *Jackson v. Milfield*, 5 Hare, 538, and the other cases on sect. 18 of the 1 W. 4, c. 60, note (e), p. 839 of 3rd edit. of this work.

In cases falling within the 30th section, the vesting order may now be obtained at chambers; [Rules of the Supreme Court, Order 55, R. 2 (8).]

(*z*) The expression "unborn persons" has been construed liberally, and has been held to include the "heirs of a person now living"; *Basnett v. Moxon*, 20 L. R. Eq. 182.

made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and thereupon it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Court or the said Lord Chancellor might under the provisions of this Act make concerning the estates, rights and interests of trustees born or unborn.

Court has power to give directions how the right to any stock or chose *en action* shall be exercised.

XXXI. And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery to make declarations and give directions concerning the manner in which the right to any stock or chose *en action* vested under the provisions of this Act shall be exercised; and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced (a).

Power of the Court to

XXXII. And be it enacted, that whenever it shall be [\* 1028] *expedient* (b) to \* appoint a new trustee or new

(a) Under this section the Court has no jurisdiction to order the fund into Court; *Re Parby*, 29 L. T. 72. But it can direct trustee to transfer into Court under the Trustee Relief Act; *Re Thornton's Trusts*, 9 W. R. 475.

(b) Where a trustee appointed by a will is an *infant*, the Court deems it expedient to appoint a trustee in his place; *Re Porter's Trust*, 2 Jur. N. S. 349; *Re Gartside's Estate*, 1 W. R. 196. But the order should be without prejudice to an application by the infant on his coming of age to be restored to the trust; *Re Sheldermine*, 33 L. J. N. S. Ch. 474; [*Re Brunt*, W. N. 1883, p. 220.

Where a trustee is by age and infirmity incapable of acting as a trustee the Court considers it expedient to appoint a new trustee in his place; *Re Lemann's Trusts*, 22 Ch. D. 633.]

Where there is a great difficulty in obtaining *administration* to the deceased trustee, or last surviving trustee, the Court considers it *expedient* to appoint new trustees; *Davis v. Chanter*, 4 Jur. N. S. 272; *Re Matthews*, 26 Beav. 463; or generally where there is no personal representative of a surviving trustee; *Re Davis, Trust*, 12 L. R. Eq. 214.

Where two trustees where desirous of retiring, and it was doubtful whether the power of appointing new trustees in the settlement applied to the case, it was deemed *expedient* to appoint new trustees; *Re Woodgate's Settlement*, 5 W. R. 448; *Re Armstrong's Settlement*, *Ib.*

A trustee had become bankrupt, had never surrendered and absconded, and the Court under the Trustee Act, 1850, and the Bankruptcy Act, 1849, s. 130, appointed a new a trustee in his place; *Re Renshaw's Trusts*, 4 L. R. Ch. App. 783.

The three trustees appointed by a testator died in his lifetime, and the Court appointed new trustees; *Re Smirthwaite's Trusts*, 11 L. R. Eq. 251.

Under the combined effect of this section, and of the Bankruptcy



*trustees (c)*, and it shall be found, *inexpedient*, *difficult (d)* or *impracticable* so to do without the assistance of new trustees.

Act, [1883, s. 147, which in substance re-enacted the 117th section of the Bankruptcy Act, 1869] the Court has power to appoint a new trustee in the place of a trustee who has become bankrupt, whether he voluntarily resigns or not; *Coombes v. Brookes*, 12 L. R. Eq. 61.

(c) The Court cannot under the Act remove a trustee who is willing to act; *Re Hodson's Settlement*, 9 Hare, 118; *Re Hadley*, 5 De G. & Sm. 67; *Re Garty's Settlement*, 3 N. R. 636; [*Re Combs*, 51 L. T. N. S. 45.] Thus where one of the two trustees was residing out of the jurisdiction, but it did not appear whether such residence was likely to be permanent, the Court refused to appoint a new trustee in his room; *Re Mais*, 19 Jur. 608; see *Re Lincoln Primitive Methodists*, 1 Jur. N. S. 1011. [Where it was alleged that a trustee was of unsound mind, but the trustee disputed his insanity and was unwilling to be removed, the Court refused to make an order; *Re Combs*, 51 L. T. N. S. 45.] If there be ground for removing a trustee for misconduct or other cause, the application to the Court should be by suit, as it was not the intention of the Act to deprive retiring trustees of their right to have their accounts taken in the presence of their *cestuis que trust*, or of their *lien* upon the trust estate, for any balance due to them; *Re Blanchard*, 7 Jur. N. S. 505. Even a *solicitor*, though an officer of the Court, is not removable by petition against his will, on grounds of misconduct in the character, not of solicitor, but of trustee; *Re Blanchard*, 3 De G. F. & J. 131. But where one of the trustees had gone to Australia, and it was not known where he was, the Court appointed a new trustee in his place; *Re Harrison's Trusts*, 22 L. J. N. S. Ch. 69. And where an assignee in bankruptcy had resigned his office and gone abroad, and the creditors had accepted his resignation, the Court made a vesting order; *Re Joyce's Estate*, 2 L. R. Eq. 576; and in another case where a trustee had gone abroad to reside permanently the Court appointed a trustee in his place; *Re Bignold's Settlement Trusts*, 7 L. R. Ch. App. 223. [Under the Bankruptcy Act, 1883, s. 147, as was the case under the Bankruptcy Act, 1869, s. 117, a bankrupt trustee may be removed against his will, both these sections containing the words "whether voluntarily resigning or not"; *Re Adams' Trusts*, 12 Ch. D. 634.]

(d) Where there is a power of appointment of new trustees, and the donee is willing to exercise it, the Court will not appoint new trustees upon a suggestion that the power will be improperly exercised; *Re Hodson's Settlement*, 9 Hare, 118. But where the parties having the power of appointing new trustees were resident in India, the Court made an order; *Re Humphry's Estate*, 1 Jur. N. S. 921. If the power of appointing new trustees be vested in a lunatic, the Court of Chancery has jurisdiction to appoint a new trustee not under the special power given to the lunatic, but under the statutory power of the Act, *Re Sparrow*, 5 L. R. Ch. App. 662. The petition should state if such is the case, that there is a power of appointing new trustees, but that the persons capable of exercising it are not willing to do so; *Re Sutton*, W. N. 1885, p. 122.

If trustees have been already appointed under a power, the Court can appoint them again for the purpose of making a vesting order; *Re Mundel's Trust*, 2 L. T. N. S. 653; [*Re Pearson*, 5 Ch. D. 982; *Re Chell*, 49, L. T. N. S. 196;] *Re Carson's Settlement Trusts*,

Powers of  
new trustees.

tance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees (e). [ \* 1029] \*XXXIII. And be it enacted, that the person or persons who, upon the making of such order as

W. N. 1867, p. 32; *Re Clay's Settlement*, W. N. 1873, p. 129; *Re Dalglish's Settlement*, 4 Ch. D. 143, reversing S. C. 1 Ch. D. 46; [*Re M'Carthy's Trusts*, 1 L. R. Ir. 16;] and See *Re Driver's Settlement*, 19 L. R. Eq. 352. But the Court will require evidence of the fitness of the persons appointed before making such order; *Re Maynard's Settlement*, 16 Jur. 1084.

(e) Where it is sought to substitute a trustee in the place of a *lunatic* trustee, the application must be made in lunacy; *Re Ormerod*, 3 De G. & J. 249, and cases there cited; *Re Davidson*, 20 L. J. N. S. Ch. 644; *Re Waugh's Trust*, 2 De G. M. & 279; *Re Good Intent Benefit Society*, 2 W. R. 671; *Jeffries v. Drysdale*, 9 W. R. 428; see *Trustee Extension Act*, s. 10, and *Re Burton's Trusts*, 6 I. R. Eq. 270.

On an application for the appointment of new trustees and a vesting order where the legal estate is vested in three persons, one of whom is a *lunatic*, the petition should be presented in Lunacy as well as in Chancery; *Re Mason*, 10 L. R. Ch. App. 273; [*Re Duce's or Druce's Trusts*, 30 W. R. 759; 46 L. T. N. S. 669; but where the application is merely for the appointment of new trustees and no vesting order is required, the order may be made in Chancery only; *Re Vickers' Trusts*, 3 Ch. D. 112. Where there were originally three trustees, and a new trustee had been appointed under a power, in the place of one of the trustees who was a *lunatic*, it was held that a petition for a vesting order must be entitled in Chancery as well as in Lunacy, as otherwise the vesting order would sever the joint tenancy, and that the new trustee must be re-appointed by the Court before a vesting order could be made; *Re Pearson*, 5 Ch. D. 982; *Re Chell*, 49 L. T. N. S. 196. Where the existing trustee was of unsound mind and out of the jurisdiction, new trustees were appointed in Chancery and a vesting order made under sect. 9; *Re Gardner's Trusts*, 10 Ch. D. 29.]

If the power of appointing new trustees be in the tenant for life who is a *lunatic*, the Court will not appoint a new trustee under the Act until the appointment of a committee; *Re Parker's Trusts*, 32 Beav. 580.

In an application to the Court for the appointment of new trustees of a settlement, it was objected that the deed was *invalid* but the Court refused to enter into that question, and appointed new trustees to protect the property; *Re Matthews*, 26 Beav. 463.

The decisions were formerly in conflict, whether under this section the Court could appoint new trustees in a case where there was *no existing trustee*, Vice-Chancellor Parker holding the affirmative; *Re Tyler's Trust*, 5 De G. & Sm. 56; and Vice-Chancellor Turner the negative; *Re Hazeldine*, 16 Jur. 853. And see *Re Frost's Settlement*, 15 Jur. 644. But all doubt for the future has been removed by the 9th section of the *Trustee Extension Act*.

The Court in appointing new trustees under this section does not limit itself necessarily to the number named in the original instrument of trust. Thus it has appointed two instead of one;

last aforesaid, shall be trustee or trustees,\* shall [\* 1030] have all the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

Tunstall's Will, 4 De G. & Sm. 421; and has added two new trustees to the two original trustees; Re Baycott, 5 W. R. 15. But it never appoints a *single* trustee where there were originally more trustees than one; Re Ellison's Trust, 2 Jur. N. S. 62; Re Porter's Trust, 2 Jur. N. S. 349; Re Tunstall, 15 Jur. 645; Re Dickinson's Trust, 1 Jur. N. S. 724. But where there was only one trustee originally and the trust was coming to an end the Court appointed a single trustee; Re Reynault, 16 Jur. 233. The Court will appoint two trustees where there were originally three; Bulkeley v. Earl of Eglinton, 1 Jur. N. S. 994; Re Marriott's Settlement, 18 L. T. N. S. 749; or will appoint three where there were originally four; Emmet v. Clarke, 7 Jur. N. S. 404; and where a fund was bequeathed to a single trustee upon trust for a person for life, with remainder to two others, and the remaindermen petitioned for the appointment of an additional trustee, the Court made the order but threw the costs upon the remaindermen; Re Brackenbury's Trusts, 10 L. R. Eq. 45.

In one case, where there was a power of appointing new trustees, with a direction that the number might be augmented or reduced, and one of the three trustees wished to retire, but no new trustee could be found, the Court appointed the two continuing trustees to be the sole trustees; Re Stokes' Trusts, 13 L. R. Eq. 333; [and this decision was subsequently followed in Re Tatham's Trusts, W. N. 1877, p. 259; Re Harford's Trusts, 13 Ch. D. 135; Re Gibbin's Trusts, W. N. 1880, p. 99; Re Shipperdson's Trusts, 49 L. J. N. S. Ch. 619; Re Northorp, 29 W. R. 134; but in Re Colyer, 50 L. J. N. S. Ch. 479, L. J. Cotton, in a Lunacy petition, declined to follow it, and required the full number of trustees to be made up; and in Re Aston, 23 Ch. D. 217, the late M.R., with the concurrence of the other members of the Court, while adhering to his decision in Re Harford's Trusts, declined to follow it, on the ground of L. J. Cotton's objection, and to avoid a conflict of decisions between the practice of different members of the Court; and see Re Lamb's Trusts, 28 Ch. D. 77. But where the whole of the fund is immediately divisible, the Court will not require the appointment of a new trustee; Re Martyn, 26 Ch. D. 745; Re Lamb's Trust, *ubi supra*.]

In the case of a *charity*, the Court appointed ten new trustees and vested the estate in the whole body, and directed that when reduced to three the trustees should apply at Chambers for the appointment of new trustees; Re Bergholt, 2 Eq. Rep. 90.

The Court will not [in general] appoint persons trustees who are resident *out of the jurisdiction*; Re Guibert, 16 Jur. 852; Re Curtis's Trust, 5 I. R. Eq. 429; [but the Court has in several cases, where the special circumstances rendered that course advisable, appointed such trustees; Re Austen's Settlement, 38 L. T. N. S. 601; Re Cunard's Trusts, 48 L. J. N. S. Ch. 192; 27 W. R. 52; Re Hill's Trusts, W. N. 1874, p. 228;] and it will not appoint one of the *cestuis que trust* a trustee, if it can be avoided; *Ex parte* Clutton, 17 Jur. 988; Re Clissold, 10 L. T. N. S. 642; *Ex parte* Conybeare's Settlement, 1 W. R. 458; and see Re Giraud, 32 Beav. 385.

The husband of a *cestui que trust* was appointed jointly with another, on the husband's undertaking that if he became sole

[ \* 1031 ] \* XXXIV. And be it enacted, that it shall be

trustee he would immediately take steps for the appointment of a co-trustee ; *Re Hattatt's Trusts*, 21 L. T. N. S. 781 ; 18 W. R. 416 ; [ *Re Burgess's Trusts*, W. N. 1877, p. 87 ; *Re Lightbody's Trusts*, 52 L. T. N. S. 40 ; but this undertaking was not required in *Re Jesson* (In Lunacy, 7 Aug. 1878, M.S.), where three new trustees were appointed, one of whom was the husband of the tenant for life. ] In another case one of the firm of solicitors who acted for the petitioners was appointed trustee ; *Re Brentnall's Trusts*, W. N. 1872, p. 77.

A *cestui que trust* may apply for the appointment of new trustees by *petition* under the Act, but this does not preclude him from instituting a suit for that purpose ; *Legg v. Mackrell*, 1 Giff. 165 ; 4 L. T. N. S. 568. But if he adopt the latter course instead of presenting a petition the Court may make the offending party answerable for the difference of the costs ; *Thomas v. Walker*, 18 Beav. 521.

Where there are *two distinct trust estates* under the same will, but only one set of trustees, the Court, with the consent of the representative of the surviving trustee, will appoint new trustees of one estate without dealing with the other estate ; *Re Dennis*, 12 W. R. 575 ; and generally the Court assumes the power of appointing separate trustees of separate shares ; *Re Cotterill's Trusts*, W. N. 1869, p. 183 ; [and see sect. 5 of the *Conveyancing Act*, 1882, 45 & 46 Vict. c. 39, which now expressly authorizes this to be done.]

The Court can appoint new trustees under this section where a trust is an *office* without any estate ; *Re Boyce*, 10 Jur. N. S. 138 ; but in such a case where the trustee was a lunatic, the order should have been made both in Chancery and Lunacy ; S. C. see *ante*, p. 1013, note (e). But now by the 10th section of the Extension Act the order can be made in lunacy only ; *Re Owen*, 4 L. R. Ch. App. 782. The Court (notwithstanding the 197th section of the Bankruptcy Act, 24 & 25 Vict. c. 134), appointed new trustees of a creditors' deed ; *Re Price's Trust Deed*, 6 L. R. Eq. 460 ; *Re Bache's Trust*, 16 W. R. 1078 ; *Re Raphael's Trust Estate*, 9 L. R. Eq. 233 ; *Re Donisthorpe*, 10 L. R. Ch. App. 55.

In addition to the evidence of the necessary facts to bring the case within the Act, the Court before appointing new trustees requires evidence by affidavit of the *fitness* of the proposed trustees, and *their consent* to act ; *Re Battersby's Trust*, 16 Jur. 900. But if the evidence be satisfactory the Court will make the order at once, without a *reference* ; *Re Tunstall's*, 15 Jur. 645. [In ordinary cases an affidavit of fitness by one responsible person is sufficient, but if the trust fund be of large amount, the evidence of a second person may be required ; *Re Hartley's Will*, W. N. 1879, p. 197.]

The new trustee *need* not appear upon the petition to consent ; *Re Draper's Settlement*, 2 W. R. 440 ; though they *may* appear to consent ; *Re Parke's Trust*, 21 L. T. 218. If they do not appear an *affidavit* that the proposed new trustees will consent is insufficient ; *Re Parke's Trust*, 21 L. T. 218 ; and their *written consent* must be proved.

Where the trust fund is the subject of a *suit*, the affidavit of the *solicitor in the cause* is not the proper evidence of the fitness of the new trustee, as it is the trustees, duty to watch the solicitor ; *Grundy v. Buckeridge*, 22 L. J. N. S. Ch. 1007.

In one order the Court inadvertently appointed an *alien* a trus-

lawful (f) for the said Court of Chancery upon making any order (g) for appointing a new trustee or new trustees, either by the same or by any subsequent order (h) to direct that any lands subject to the trust (i) shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct; and such order shall have the same effect as if the person or persons who before such order [was or] were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estate (k).

Power of the Court on appointing new trustees to vest the lands.

tee and afterwards refused to substitute a natural born subject without the consent of the Crown, which was not given. The order was then reheard by the same judge *pro forma* and discharged, and a natural born subject appointed in the place of the alien; Re Giraud, 32 Beav. 385. See now 33 Vict. c. 14, s. 2, and where the *cestuis que trust* were living abroad and English trustees could not be found, the Court appointed aliens; Re Hill's Trusts, W. N. 1874, p. 228; [and see *ante*, p. 1030.]

As to the parties to be served on applications for the appointment of new trustees, see note (c), page 1033, *infra*.

(f) The late Vice-Chancellor Parker was not disposed to make a vesting order in cases where a conveyance could be had; Langhorn v. Langhorn, 21 L. J. N. S. Ch. 860. But it is clear that the Court has power to make, and according to the present practice, it frequently does make, vesting orders even where there is no incapacity in the person seised or possessed of the legal estate to convey to the new trustee; Re Manning's Trusts, Kay, App. xxviii.

(g) If the necessary evidence was not forthcoming at the date of the order, but is afterwards obtained, the order must under the direction of the Court, be made over again, so as to beardate subsequently to the production of the evidence; Re Havelock's Trusts, 11 Jur. N. S. 906.

(h) The new trustees may be appointed in a suit, and a vesting order may be made subsequently. See Re Hughes's Settlement, 2 H. & M. 695.

(i) If the lands be *leaseholds* for a term of years, the Court can, under this section, make a vesting order, and without the concurrence of the landlord unless there was a restriction against alienation; Re Matthew's Settlement, 2 W. R. 85, &c.; [Re Driver's Settlement, 19 L. R. Eq. 352; Re Dalgleish's Settlement, 4 Ch. D. 143, reversing S. C. 1 Ch. D. 46; Re Rathbone, 2 Ch. D. 483;] see *ante*, p. 1018, note (a). But see Re Farrant's Trust, 20 L. J. Ch. 532. And the Court has jurisdiction to vest the estate though it has escheated to the Crown, provided the Crown consent; Re Martinez' Trust, W. N. 1870, p. 70; 22 L. T. N. S. 403; and see sect. 15, of this Act.

(k) The Court has jurisdiction to divest the whole estate from the continuing and incapacitated trustees, and to vest it in the new body of trustees (including the continuing trustees) as joint tenants; Re Fisher's Will, 1 W. R. 505; Smith v. Smith, 3 Drew. 72, overruling Re Watt's Settlement, 9 Hare, 106, and Re Plyer's Trust, Ib. 220. But the Court has no power to give any direction as to the mode in which the trust shall be executed by the trustees; Re Tayler, 2 De G. F. & J. 125; see *ante*, p. 1027, note (b).

Power of the Court to vest right in the trustees to call for transfer of stock or sue for any *chose en action*.

[ \* 1032 ] \* XXXV. And be it enacted, that it shall be lawful for the said Court of Chancery, upon making an order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to *vest* the right to call for a transfer of any *stock* (l) subject to the trust, or to receive the *dividends* or income thereof, or to sue for or recover any *chosen action*, subject to the trust, or any *interest* in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees (m).

Old trustees not to be discharged from liability.

XXXVI. And be it enacted, that any such appointment by the Court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

Who may apply in case of trust.

XXXVII. And be it enacted, that an order under any of the hereinbefore contained provisions for the appointment of a *new trustee or trustees*, or concerning any *lands, stock, or chose en action* subject to a trust, may be made upon the application of any *person beneficially interested* in such lands, stock, or *chose en action*, whether under disability or not (n), or upon the application of any

(l) The Court has no power under this section to vest the *right to the stock* itself, but only the right to *call for a transfer*; and an order professing to vest the right to the stock was accordingly discharged; *Re Smyth's Settlement*, 4 De G. & Sm. 499; but see now sect. 6 of the Trustee Extension Act, and p. 1043, *post*, note (b).

The Court has power under this section to vest the right as to stock standing in the name of a deceased person who has no personal representative; *Re Herbert's Will*, 8 W. R. 272. [See *Re Crowe's Trusts*, 14 Ch. D. 304, 610.]

The Court will not make a vesting order which would lend any sanction to a past breach of trust; *Re Harrison*, 22 L. J. N. S. Ch. 69. And the Court as distinct from the L. C. & L. J. J, will not make a vesting order where the old trustee in whom the property is vested is a lunatic; *Re Smith's Trusts*, 4 I. R. Eq. 180.

[Where part of the trust funds had been invested in unauthorized securities, and it was desired to sell them and reinvest the proceeds in proper securities, the Court vested in the new trustees the right to call for a transfer of the funds to themselves, or to any *purchaser or purchasers*, the trustees undertaking to hold the proceeds on the trusts of the settlement; *Re Peacock*, 14 Ch. D. 212.]

(m) A vesting order vests the estate from the date of the order; *Woodfall v. Arbuthnot*, 3 L. R. P. & D. 108.

(n) A person *contingently* entitled to a beneficial interest is within the meaning of the Act; *Re Sheppard's Trusts*, 8 Jur. N. S. 711, reversed 1 N. R. 76; 4 De G. F. & J. 423.

In sales by the Court the *purchaser*, as *beneficially interested*

person duly appointed as a \* trustee thereof; [ \* 1033 ] Who may apply in case of mortgage.  
 and that an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose en action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the monies secured by such mortgage.

XXXVIII. and XXXIX. (These sections were repealed by "The Statute Law Revision Act, 1875.")

XL. And be it enacted, that any person or persons entitled in manner aforesaid to apply for an order from the said Court of Chancery, or from the Lord Chancellor intrusted as aforesaid, may, should he so think fit, present a petition (o) in the first instance to the Court of Chancery, or to the Lord Chancellor intrusted as aforesaid, for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise (p) in support of such petition before the said Court, or the Lord Chancellor intrusted as aforesaid, and may serve such person or persons with notice of such petition as he may deem entitled to the service thereof (q). Power to present petition in the first instance.  
 Form of evidence.  
 Who to be served.

in the property sold, is within the meaning of the section; *Ayles v. Cox*, 17 Beav. 584; *Rowley v. Adams*, 14 Beav. 130. And the plaintiffs in the suit, as beneficially interested in the proceeds, are also within the meaning of the section; *Re Wragg*, 1 De G. J. & S. 356. And of course the purchaser or several purchasers and the plaintiffs can join as co-petitioners; *Rowley v. Adams*, 17 Beav. 130; see 135.

*Committees of a lunatic cestui que trust* are not beneficially interested within the meaning of the section; *Re Bourke*, 2 De G. J. & S. 426.

(o) When a petition has been presented; it may be amended by order of the Court by adding co-petitioners without being re-answered; *Re Cartwright's Trust*, 8 W. R. 492.

(p) In practice the evidence adduced is universally by affidavit, but under the words "or otherwise" the applicant is not confined to evidence by affidavit.

(q) In petitions for the appointment of new trustees, all the *cestuis que trust* ought, as a general rule, to be served; *Re Richards' Trust*, 5 De G. & Sm. 636; *Re Sloper*, 18 Beav. 596; *Re Fellows's Settlement*, 2 Jur. N. S. 62; *Re Maynard's Settlement*, 16 Jur. 1084; and see *Re Lonsdale's Trust*, 14 Jur. 1101; *Re Thomas's Trust*, 15 Jur. 187; *Re Prescott's Trust*, 19 L. T. 371. But in special cases the Court relaxes the rule; *Re Smyth's Settlement*, 2 De G. & Sm. 781; *Re Blanchard*, 3 De G. F. & J. 137; *Re Blanchard's Estate*, 2 N. R. 386; [*Re Lightbody's Trusts*, 52 L. T. N. S. 40.] The devolution of the beneficial title may be traced by affidavit, without strict evidence by certificates and affidavits of identity; *Re Hoskins*, 4 De G. & J. 436.

Where it is proposed to appoint new trustees in substitution for existing trustees the petition must be served on the old trustees,

The Court may either make an order on the petition or direct a reference, or the petition to stand over for further evidence or service on other parties.

Petition may be dismissed with or without costs.

[\* 1034] \*XLI. And be it enacted, that upon the hearing of any such (*motion or*) (*a*) petition it shall be lawful for the said Court, or for the said Lord Chancellor, should it be deemed necessary, to *direct a reference* to one of the Masters in Ordinary of the Court of Chancery to inquire into any facts which require such an investigation, or it shall be lawful for the said Court or the said Lord Chancellor to direct such (*motion or*) (*r*) petition to *stand over*, to enable the petitioner or petitioners to adduce evidence or further evidence before the said Lord Chancellor, or to enable notice or any further notice of such (*motion or*) petition to be served upon any person or persons.

XLII. And be it enacted, that upon the hearing of any such (*motion or*) (*s*) petition, whether any (*certificate or*) report from a Master shall have been obtained or not, it shall be lawful for the Court, or the Lord

Re Sloper, 18 Beav. 596; who will have their costs; Futvoye v Kennard, 3 L. T. N. S. 687.

[But where a trustee is permanently resident abroad, Re Big-nold's Settlement Trusts, 7 L. R. Ch. App. 223; Re Martin Pye's Trusts, 42 L. T. N. S. 247; or where a trustee has absconded and cannot be found, Re Nicholson's Trusts, W. N. 1884, p. 76; Hyde v. Benbow, W. N. 1884, p. 117; service is unnecessary.]

Where an order is asked against *recusant* trustees under the 23rd or 24th section, the trustees need not be served; Re Baxter's Will, 2 Sm. & G. App. v.; and see the following cases, decided under 1 Will. 4, c. 60, s. 8; Re Third Burnt Tree Building Society, 16 Sim. 296; Re Bradburne, 12 L. J. N. S. Ch. 353.

In orders against a *lunatic* trustee, the committee of the estate must be served, as the lunatic trustee may have some claim for costs or otherwise; Re Saumarez, 8 De G. M. & G. 390; and see Re Wood, 7 Jur. N. S. 323. But in other cases service on the lunatic or his committee was deemed unnecessary; Re East, 8 L. R. Ch. App. 735; Re Green, 10 L. R. Ch. App. 272. The guardian of the infant heir of a trustee need not be served with a petition for a vesting order upon the appointment of new trustees; Re Little, 7 L. R. Eq. 323. But the adult heir of the last surviving trustee must be served, for he may have some claim to costs; Re Oxenham's Trusts, W. N. 1875, p. 6. [But see 44 & 45 Vict. c. 41, s. 30.]

Where an estate is subject to an *annuity*, a vesting order may be made without service on the annuitant; Re Winteringham's Trust, 3 W. R. 578.

As to service on the lord of a manor, in respect of *copyholds*, see *ante*, p. 1025, note (*a*).

As to service on the *remainderman*, where the trust estate is a term of years, see *ante*, p. 1031, note (*d*).

[The Court has jurisdiction to order service of the petition upon a person out of the jurisdiction; Re Wycherley's Trusts, 1 L. R. Ir. 12.]

[(*r*) The words "*motion or*" in this section are repealed by "The Statute Law Revision Act, 1875."]

[(*s*) The words "*motion or*" and "*certificate or*" in this section are repealed by "The Statute Law Revision Act, 1875."]



Chancellor, intrusted as aforesaid, to *dismiss such* (motion or) *petition, with or without costs, or to make an order thereupon in conformity with the provisions of this Act.*

XLIII. And be it enacted, that whensoever in any *cause or matter*, either by the evidence adduced therein or by the admissions of the parties, or by a report of one of the Masters of the Court of Chancery, the facts necessary for an order under this Act shall appear to such Court to be sufficiently proved, it shall be lawful for the said Court, either upon the *hearing of the said cause*, or of *any petition or motion* in the said cause or matter, to make such order under this Act (t).

Power to make an order in a cause.

\* XLIV. And be it enacted, that whenever [\* 1035] any order shall be made under this Act, either by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, for the purpose of *conveying or assigning any lands*, or for the purpose of releasing or disposing of any *contingent right*, and such order shall be founded on an allegation of the *personal incapacity* of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is *out of the jurisdiction* of the Court of Chancery or *cannot be found*, or that it is *uncertain which* of several trustees, or which of several devisees of a mortgagee, *was the survivor*, or whether the last trustee, or the heir or last surviving

Orders made by the Court of Chancery, founded on certain allegations, to be conclusive evidence of the matter contained in such allegations.

(t) An order may be made in a *suit* without a *petition*; Wood v. Beetlestone, 1 K. & J. 213; Collard v. Roe, 4 Jur. N. S. 431; 4 De G. & J. 525; Lechmere v. Clamp, 9 W. R. 860; Hargreaves v. Wright, 1 W. R. 408; Hughes v. Wells, 2 W. R. 575; but see Gough v. Bage, 25 L. T. N. S. 738. The High Court has no such jurisdiction to make a vesting order respecting property which is vested in a *lunatic*, but there must be a petition in lunacy; Jeffries v. Drysdale, 9 W. R. 428. [In Frodsham v. Frodsham, 15 Ch. D. 317, it was held by the Court of Appeal, reversing the late M. R., that, having regard to the recital in 18 & 19 Vict. c. 134, s. 16, Cons. Ord. xxxv. rule 1, and the practice which had prevailed ever since, it was so doubtful whether there was jurisdiction to make a vesting order in chambers, except in cases provided for by general order, as to render it unsafe to make such orders. See rules of the Supreme Court, Ord. 55, rule 2, as to the applications which may now be made in chambers; and see Re Moate's Trust, 22 Ch. D. 635. But where the matter has in the first instance been brought before the Court upon petition, it is competent to the judge who hears it to mould his order so as to direct the disposal in chambers of any of the questions arising on the petition. The making of a vesting order may thus be referred to chambers, but an order so made in chambers should state so much of the previous order as directed any inquiry preliminary to the vesting order, and as gave liberty to apply in chambers for a vesting order, and should also state the certificate which followed the inquiry; Re Tweedy, 28 Ch. D. 529.]

devisee of a mortgagee be living or dead, or on an allegation that any trustee or mortgagee has died intestate, *without an heir*, or has died and it is *not known who is his heir or devisee*, then in any of such cases the fact that the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, has made an order upon such an allegation shall be *conclusive evidence* of the matter so alleged in any Court of law or equity upon any question as to the legal validity of the order: Provided always that nothing herein contained shall prevent the Court of Chancery directing a reconveyance or re-assignment of any lands conveyed or assigned by any order under this Act, or a disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.

Jurisdiction  
in respect of  
trustees of  
charities or  
societies.

XLV. And be it enacted, that it shall be lawful for the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, to exercise the powers herein conferred for the purpose of vesting any lands, stock, or *chose en action* in the trustee or trustees of any *charity or society* over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted (*u*), whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said Court under any statute authorizing the said Court to make an order to that effect in a summary way upon petition.

No escheat or  
forfeiture of  
real or  
personal  
property held  
upon trust or  
mortgage by  
reason of any  
attainder or  
conviction of  
the trustee or  
mortgagee.

[ \* 1036 ] \* XLVI. And be it enacted, that *no lands, stock, or chose en action* vested in any person upon any *trust* or by way of *mortgage*, or any profits thereof, shall *escheat or be forfeited* to her Majesty, her heirs, or successors, or to any corporation, lord or lady of a manor, or other person, by reason of the *attainder or conviction* for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his or her co-trustee, or descend or vest in his or her

(*u*) See orders under this section, *Re Norton Folgate*, *Re Bazingstoke School*, 1 Set. on Dec. 565, 4th edit. Under 16 & 17 Vict. c. 137, where the value of the property exceeds 30*l.* per annum, any person authorized by the Charity Commissioners may apply to the judge at *chambers* for any order which may be made by such judge, notwithstanding any lunacy; *Re Davenport's Charity*, 4 De G. M. & G. 839; and see p. 852. *supra*.

representative, as if no such attainder or conviction had taken place (*v*).

XLVII. And be it enacted, that nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgagee, so far as relates to any *beneficial interest therein* of any such trustee or mortgagee, but such lands or personal estate, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed (*w*).

XLVIII. And be it enacted, that where any *infant* or person of *unsound mind* shall be entitled to any *money payable in discharge of any lands, stock, or choses en action* conveyed, assigned, or transferred under the Act, it shall be lawful for the person by whom such money is payable to pay the same into the Bank of England, in the name and with the privity of the Accountant-General, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said Court; and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in the public funds, and to order payment or distribution thereof, or payment of the dividends thereof, as to the said Court shall seem reasonable; and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

XLIX. And be it enacted, that where in any suit commenced or to be commenced in the Court of Chancery it shall be made to appear to the Court by affidavit that diligent search and inquiry has been made after any person made a *defendant, who is only a trustee*, to serve him with the process of the Court, and that he *cannot be found*, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not oth-

Act not to prevent escheat or forfeiture of beneficial interest of the trustee or mortgagee.

Money payable to infants or lunatics in discharge of lands, stock or choses en action dealt with by the Court under the Act may be paid into Court.

Court may make a decree in the absence of a trustee who is merely such, and cannot be found.

(*v*) This section is a re-enactment almost *verbatim* of section 3 of the Escheat and Forfeiture Act, 4 & 5 W. 4, c. 23. See now section 8 of the Extension Act, giving the Court power to appoint new trustees in the place of persons convicted of felony.

(*w*) This is a re-enactment of sect. 5 of the Escheat and Forfeiture Act. See now 33 & 34 Vict. c. 23.

erwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and [\* 1037] had appeared and \*filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause: Provided always, that no such decree shall bind, effect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use and benefit, or otherwise than as a trustee as aforesaid (x).

L. (*This section was repealed by "The Statute Law Revision Act, 1875."*)

Costs may be directed to be paid out of the estate.

LI. And be it enacted, that the Lord Chancellor intrusted as aforesaid, and the Court of Chancery, may order the *costs and expenses* of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper (y).

(x) In *Westhead v. Sale*, 6 W. R. 52, the Court directed the Records and Writ Clerk to certify that the cause was ready for hearing in the absence of a trustee who could not be found.

(y) The prayer as to the costs should not contain the words "incidental to or consequent" upon the application, as they give rise to uncertainty; *Re Fellows' Settlement*, 2 Jur. N. S. 62.

[Costs will not be allowed on the higher scale merely on the ground that the trust funds are large; *Re Spettigue's Trusts*, 32 W. R. 385,]

Where an *infant* trustee was ordered to convey, it was said that the infant was entitled to the same costs as an adult, and the order was made "the other party undertaking to pay such costs as should appear to be reasonably incurred;" *Re Cant*, 10 Ves. 554 (decided under 7 Anne, c. 19.)

Where a mortgaged estate has descended to an *infant* heir of the mortgagee, and the mortgagor is asking for a reconveyance on payment of principal and interest, the infant is also entitled to the costs of any inquiry as to the infancy *ultra* the ordinary costs; *Ex parte Ommaney*, 10 Sim. 298; *Miltown v. Trimbleston*, 1 Flan. & K. 338 (decided under 1 Will. 4. c. 60).

If the *lunatic*, against whom an order is sought, be a *trustee*, the trust estate or the *cestui que trust* must bear the costs of the proceedings under the Act, and if he be a *mortgagee*, and it appears upon the face of the mortgaged deed that the *lunatic* mortgagee is a trustee for a third party, the costs will fall on the mortgagor; *Re Lewes*, 1 Mac. & G. 23. But if the mortgagor had no notice of the fact that the *lunatic* was a trustee, the costs will follow

\*LII. And be it enacted, that upon any [\*1038] Court may petition being presented under this Act to the Lord direct a Chancellor intrusted as aforesaid, concerning a person commission

the general rule; Re Townsend, 1 Mac. & G. 686; Re Jones, 2 Ch. D. 70.

What is the general rule has been much disputed. The latest phase of the law is, that where the lunatic is beneficially interested in the mortgage money, there the costs of the petition, which should be presented by the committee and need not be served on the mortgagor, are (exclusive of the costs if the mortgagor is served) by force of authority and contrary to principle to be borne by the lunatics estate; Re Wheeler, 1 De G. M. & G. 436; Re Stuart, 4 De G. & J. 319, and cases cited *Ib.*; Re Phillips, 4 L. R. Ch. App. 629; but that in all other cases the costs must be paid by the mortgagor; *Ex parte* Clay, Shelf. Lun. 510, 2nd edit., where the mortgage money had *not* been paid; Re Stuart, 4 De G. & J. 317; Re Jones, 2 De G. F. & J. 554, where the mortgage money *had* been paid; and see Re Viall, 8 De G. M. & G. 439; Re Rowley's Lunacy, 1 N. R. 251; Re Townsend, 2 Ph. 348, and cases there cited.

[Where a mortgagee became of unsound mind but was not so found by inquisition, and an order was made on the petition of the mortgagor authorizing him to pay the mortgage debt into the Bank of England, and vesting the estate in the petitioner, it was held that the Court had no jurisdiction to make the mortgagee or his estate bear the costs where the application was made by the mortgagor; and no costs were allowed on either side; Re Sparks, 6 Ch. D. 361.]

The costs of applications for the *appointment of new trustees* come out of the *corpus* of the trustfund; Re Fellow's Settlement, 2 Jur. N. S. 62; Re Fulham, 15 Jur. 69; *Ex parte* Davies, 16 Jur. 882. And where new trustees of two funds are appointed upon the same petition the costs are borne by the two funds ratably according to their respective values; Re Grant's Trusts, 2 J. & H. 764.

In *Ex parte* Davies, 16 Jur. 882, the Court, though after some hesitation, declared that certain costs incurred under the Act should, with *interest* at 4 per cent., form a *charge* on the inheritance.

The Court, on appointing new trustees of real estate, has power under the section to direct the costs to be raised by a *mortgage* to be settled by the Court; Re Crabtree, V. C. Wood, 11 Jan. 1866 (MS.).

Where a petition is presented for vesting the legal estate of the lots sold by the Court in the purchasers, the petition may properly be presented by the purchasers, and the costs of the purchaser of each lot is payable out of the purchase-money of such lot; Ayles v. Cox, 17 Beav. 584. See *ante*, p. 1032, note (c).

The Court has no jurisdiction [under this section] to order a person served with the petition to pay the costs personally; Re Primrose, 23 Beav. 590. But see the decisions upon the Trustee Relief Act, Re Woodburn's Will, 1 De G. & J. 333; and subsequent cases, *ante*, p. 1003. [In Re Sarah Knight's Will, 26 Ch. D. 82, Pearson, J., was of opinion that he had jurisdiction under the Rules of the Supreme Court, 1883, Order 65, r. 1, to order a respondent to pay the costs personally, but the decision was reversed on appeal on other grounds, the Court refraining from deciding the point, but Cotton, L. J., expressing a doubt as to the jurisdiction.]

concerning  
person of  
unsound  
mind.

Court may  
direct a suit  
to be insti-  
tuted.

Powers of  
Court of  
Chancery to  
extend to  
property in  
the colonies,  
but not to  
Scotland.  
Powers given  
to Court of  
Chancery  
may be exer-  
cised by  
that Court in  
Ireland.  
Powers of  
Lord  
Chancellor in  
lunacy to ex-  
tend to the  
colonies, but  
not to Scot-  
land or  
Ireland.

of unsound mind, it shall be lawful for the said Lord Chancellor, should he so think fit, to direct that a *commission in the nature of a writ de lunatico inquirendo* shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission (z).

LIII. And be it enacted, that upon any petition under this Act being presented to the Lord Chancellor intrusted as aforesaid, or to the Court of Chancery, it shall be lawful for the said Lord Chancellor, or the said Court of Chancery, to postpone making any order upon such petition *until the right* of the petitioner or petitioners *shall have been declared in a suit* duly instituted for that purpose (a).

[ \* 1039 ] \* LIV. And be it enacted, that the powers and authorities given by this Act to the *Court of Chancery* in England shall extend to all *lands and personal estate* within the dominions, plantations, and colonies belonging to her Majesty (*except Scotland*) (b).

LV. And be it enacted, that the powers and authorities given by this Act to the *Court of Chancery* in England shall and may be exercised in like manner and are hereby given and extended to the Court of Chancery *in Ireland* with respect to all *lands and personal estate in Ireland*.

LVI. And be it enacted, that the powers and authorities given by this Act to the *Lord Chancellor* of Great Britain intrusted as aforesaid, shall extend to all *lands and personal estate* within any of the dominions, plantations, and colonies belonging to her Majesty (*except Scotland and Ireland*) (c).

---

[(z) A commission will not be directed to issue under this section, where the trustee disputes his insanity, but the inquiry in that case should be under the ordinary proceedings in lunacy. The object of the section is only to give a summary and easy remedy for the removal of the trustee where there is no contest as to the facts, but the *Court* requires information; *Re Combs*, 51 L. T. N. S. 45.]

(a) Thus where a father purchased in the name of his son, but without intending an advancement, the Court refused to declare the son, who was a lunatic, a trustee for his father without a suit, and directed a suit accordingly; *Collinson v. Collinson*, 3 De G. M. & G. 409; and see *Re Burt*, 9 Hare, 289.

(b) Consequently the *High Court of Justice here* may make a vesting order as to lands or personal estate in Ireland; *Re Hewitt's Estate*, 6 W. R. 537; *Re Taitt's Trusts*, W. N. 1870; p. 257; [*Re Lamotte*, 4 Ch. D. 325; *Re Hodgson*, 11 Ch. D. 888;] or, as to lands in Canada, *Re Schofield*, 24 L. T. 322; *Re Groom*, 11 L. T. N. S. 336.

(c) The *Lord Chancellor of Great Britain*, sitting in lunacy, has no jurisdiction over lands in Ireland; *Re Davies*, 3 Mac. & G.

LVII. And be it enacted, that the powers and authorities given by this Act to the *Lord Chancellor* of Great Britain intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the *Lord Chancellor of Ireland* intrusted as aforesaid, with respect to lands and personal estate in Ireland.

Powers in lunacy may be exercised by Lord Chancellor of Ireland with respect to property in Ireland.  
Short title of the Act.

LVIII. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments and in legal proceedings, it shall be sufficient to use the expression "The Trustee Act, 1850."

LIX. And be it enacted, that this Act shall come into operation on the first day of November, one thousand eight hundred and fifty.

Commencement of Act.

---

278; [but the Judges of the Court of Appeal who have jurisdiction in Lunacy, having been by special order appointed additional Judges of the Chancery Division for the purposes of applications connected with lunacy can under the two jurisdictions appoint new trustees and make an order vesting lands or personal estate in Ireland; *Re Lamotte, ubi supra*; *Re Hodgson, ubi supra*.]

## TRUSTEE EXTENSION ACT, 1852.

15 &amp; 16 VICT. CAP. 55.

*An Act to extend the Provisions of the "Trustee Act, 1850." (30th June, 1852.)*

WHEREAS it is expedient to extend the provisions of the Trustee Act, 1850 : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by authority of same.

Court of  
Chancery  
may after a  
decree or  
order for sale  
make an  
order for  
vesting the  
estate in lieu

1. That when any *decree or order* shall have been made (*d*) by any Court of equity directing the sale (*e*) of any lands for any purpose whatever (*f*), every person seised or possessed of such land, or entitled to a contingent right therein, being a *party* to the suit or proceeding in which such decree or order shall have been [ \* 1041 ] made, and bound thereby (*g*), or \* being *other-*

(*d*) A decree made *before* the passing of this Act is within the operation of this clause; *Wake v. Wake*, 17 Jur. 545. The decree or order binds only the parties to the suit, and therefore in an administration suit, if the legal estate has descended to the heir of the testator who is not a party, the Court has no jurisdiction to make a vesting order; *Gunson v. Simpson*, 5 L. R. Eq. 332; and see *Gough v. Bage*, W. N. 1871, p. 237; 25 L. T. N. S. 738.

[By 47 & 18 Vict. c. 71 (The Intestates Estates Act, 1884), s. 5, on a sale under that Act of any estate or interest of the Crown, this section is to apply as if such estate or interest were vested in a subject.]

[(*e*) This section applies to a sale under the Partition Acts; *Beckett v. Sutton*, 19 Ch. D. 646.]

(*f*) The 29th section of the Trustee Act, 1850, applied only to decrees directing a sale for the payment of *debts*; and consequently where the decree for sale had been made in order to provide a fund available for the payment of *costs*, the Court had no power to make a vesting order; *Weston v. Filer*, 5 De G. & Sm. 608. This enactment remedies the inconvenience; *Hancox v. Spittle*, 3 Sm. & G. 478. And now in cases falling under this section, a vesting order may be obtained in Chambers; see [Rules of the Supreme Court, Order 55, R. 2, Art. 8. The section applies to the case where the person to convey is not under disability, *per* V. C. Bacon; *Re Lee*, *Kenyon v. Lee*, 1 Set. on Dec. 4th edit. 537; *Beckett v. Sutton*, 19 Ch. D. 646; but see *Strong v. Padmore*, *contra*, 1 Set. on Dec. 4th edit. 537.]

[(*g*) A devisee of real estate charged with debts who had become



wise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery (*h*), if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof, for *such estate as the Court shall think fit*, either in any *purchaser* (*i*) or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and duly executed all proper conveyances and assignments of such lands for such estate.

of conveyance by a party to the suit or a person bound by the decree or order.

II. That sections numbered seventeen and eighteen in the Queen's Printer's copy of the Trustee Act, 1850, be repealed; and in every case where any person is or shall be *jointly* or *solely* seised or possessed of any lands or entitled to a *contingent right* therein upon any trust, and a demand shall have been made upon such trustee by a person *entitled to require a conveyance or assignment* of such lands, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused (*k*) or neglected to convey or assign the said lands for the space of twenty-eight days after such demand (*l*), to make an order vesting such lands in such person, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the

Powers to make an order for vesting the estate, on refusal or neglect of a trustee to convey or release.

a lunatic, and had subsequently by his committee, with the sanction of the Master in Lunacy, commenced an action for the administration of his testator's estate is bound by an order for the sale of the real estate made in the action, and is a trustee within the section; *Re Stamper*, 46 L. T. N. S. 372.]

(*h*) And the Court of Chancery had jurisdiction even where the party seised or possessed was of unsound mind, but not found lunatic; *Herring v. Clark*, 4 L. R. Ch. App. 167.

(*i*) As to the persons to present the petition where lands are sold in several lots to different purchasers, see *ante*, p. 1032, note (*c*); 1038, note.

As to the cost of the petition, see *ante*, p. 1038, note.

(*k*) A married woman is capable of refusing; *Rowley v. Adams*, 14 Beav. 130.

(*l*) In *Knight v. Knight*, 14 L. T. N. S. 161, a divorced woman obtained a vesting order against her late husband.

Power to make an order for the transfer, or receipt of dividends of stock in name of an infant trustee.

lands, or a release of such right, in the same manner and for the same estate (m).

III. That when any *infant* shall be *solely* entitled to [\* 1042] any *stock* upon \* any *trust*, it shall be lawful for the Court of Chancery to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof (n); and when any infant shall be entitled *jointly* with any other person or persons to any *stock* upon any *trust*, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, either in the person or persons conjointly entitled with the infant, or in him or them together with any other person or persons the said Court may appoint (o).

(m) Under the 17th and 18th sections of the Trustee Act, 1850, the power of the Court arose only upon *written* refusal to convey, or neglect or refusal so to do after tender of a proper deed. The former contingency was of rare occurrence, and considerable difficulty was often experienced in bringing the case within the terms of the latter. In copyholds, for instance, vested in a *feme covert*, who could only surrender with consent of the husband, and on being privately examined, how could a proper deed be tendered? See *Rowley v. Adams*, 14 Beav. 130.

Where a mortgagor covenanted to surrender copyholds to the mortgagee, and refused to surrender for twenty-eight days, the Court made a vesting order, and service on the mortgagor, who could not be found, was dispensed with; *Re Crowe's Mortgage*, 13 L. R. Eq. 26.

(n) An order was once made by mistake under this Act, where the infant was entitled beneficially; *Re Westwood*, 6 N. R. 61; but the order was afterwards corrected, and made under the proper Act, viz., 1 W. 4, c. 65, s. 32; *Re Westwood*, 6 N. R. 316.

Agents of executors invested a sum of stock in the names of infants, who had an interest under the will, instead of in the names of the executors, and the Court made a vesting order for the transfer into the names of the executors; *Rives v. Rives*, W. N. 1866, p. 144; 14 L. T. S. 351. So where executors had invested stock in the names of themselves and an infant, and the infant was the survivor; *Gardner v. Cowles*, 3 Ch. D. 304.

Where stock was standing in the names of three trustees and (*lege for*) an infant, and two of the trustees were dead and the third was out of the jurisdiction, the Court appointed a guardian, and allowed maintenance, and vested the right to receive the dividends in the guardian during the infant's minority; *Re Morgan*, 1 Set. on Dec. 516, 4th edit.

(o) In *Cramer v. Cramer*, 5 De G. & Sm. 312, Vice-Chancellor Parker held that, the Trustee Act 1850 having conferred no general power in the case of an *infant* trustee of stock *within the jurisdiction*, the Court had no authority to make a vesting order with regard to stock held by an infant trustee *out of the jurisdiction*. Hence this clause; see *Sanders v. Homer*, 25 Beav. 467.

[The section applies to the case of stock to which an infant is beneficially entitled standing in the joint names of the infant and another person; *Re Harwood*, 20 Ch. D. 536.]

IV. That where *any person* shall neglect or refuse to transfer any stock or to receive the dividends or income thereof, or to sue for or recover any *chose en action*, or any interest in respect thereof, for the space of *twenty-eight days* next after an order of the Court of Chancery for that purpose shall have been served upon him (*p*), it shall be lawful for the Court of Chancery to make an order (*q*) vesting all the right of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such *chose en action*, or any interest in respect thereof, in such person or persons as the said Court may appoint.

On neglect to transfer stock or receive dividends or to sue for *chose en action* or interest for 28 days vesting order may be made.

V. When any stock shall be standing in the sole name of a deceased person, and his *personal representative* shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of *twenty-eight days* next after an order of the Court of Chancery for that \* purpose shall have been [ \* 1043 ] served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint (*r*).

On like neglect by executor to transfer stock, or receive dividends, similar order may be made.

VI. When any order being or purporting to be under this Act, or under the Trustee Act, 1850, shall be made by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly (*s*):

Bank of England and companies to comply with such orders.

(*p*) In *Mackenzie v. Mackenzie*, 5 De G. & Sm. 338, it was held that the case of a person refusing to transfer stock in obedience to an order of the Court, was not provided for in the Trustee Act, 1850. Hence the present remedial enactment.

(*q*) The order under this section need not be made upon a petition, but may be made upon *motion*; *Re Holbrook's Will*, 5 Jur. N. S. 1333.

(*r*) It is the practice of the Bank of England not to allow the dividend to be split into fractional parts; *Skykker v. Pelichet*, 9 W. R. 191.

(*s*) In *Re Smyth's Settlement*, 4 De G. & Sm. 499, it was held that, under the 35th section (which differed in this respect from the 26th section) of the Trustee Act, 1850, the Court had no power to vest "the right to the stock," but only "the right to call for a transfer of the stock," and that the Bank was justified in refusing to transfer stock to new trustees under an order vesting in them "the right to the stock." Hence this enactment, which directs the Bank to obey all orders vesting the right to stock or the right to call for a transfer of it. [Where the trustees appointed by a testator died and new trustees were appointed in

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order, and the *Bank of England, and all companies and associations* whatever, and all persons, shall be equally *bound and compellable to comply* with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said *Bank of England*, or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Indemnity to  
Bank and  
companies so  
obeying.

VII. That every order made or to be made, being or purporting to be made under this or the Trustee Act, 1850, by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, and duly passed and entered, shall be a complete *indemnity* to the *Bank of England*, and all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for the *Bank of England*, or such company or association or person, to enquire concerning the propriety of such order, or whether the Lord Chancellor intrusted as aforesaid, or the Court of Chancery had jurisdiction to make the same.

Power to  
appoint new  
trustees in  
lieu of  
persons  
convicted of  
felony, and  
to vest the  
trust estate  
accordingly.

VIII. That when any person is or shall be *jointly or solely* seised or possessed of any *lands* or entitled to any [ \* 1044 ] *stock*, upon any *trust*, and such \* person has been or shall be convicted of *felony*, it shall be lawful for the Court of Chancery, upon proof of such conviction, to *appoint any person to be a trustee* in the place of such convict, and to make an *order for vesting* such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability and had duly executed a conveyance or assignment of his estate and interest in the same.

Power to the  
Court to  
appoint new

IX. That in all cases where it shall be found expedient to appoint a *new* trustee, and it shall be found inexpedient, difficult, or impracticable so to do without

---

their place, and all the trust property was vested in the new trustees, the Bank declined to act unless the order directed the new trustees to transfer the stock into their own names; *Re Glanville's Trusts*, W. N., 1877, p. 248; 1878, p. 21.]

the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be *any existing trustee or not* at the time of making such order (t).

X. In every case in which the Lord Chancellor intrusted as aforesaid (u) has jurisdiction under this Act, or the Trustee Act, 1850, to order a conveyance or transfer of land or stock, or to make a vesting order, it shall be lawful for him also to *make an order appointing a new trustee or new trustees*, in like manner as the Court of Chancery may do in like cases, without its being necessary that the order should be made in Chancery as well as in Lunacy, or be passed and entered by the Registrar of the Court of Chancery (v).

XI. That all the jurisdiction conferred by this Act (w) on the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of Lunatics, shall and may be had, exercised, \* and performed by the person or [\* 1045] persons for the time being intrusted as aforesaid.

XII. That this Act shall be read and construed according to the Act to be

(t) See note, p. 1029, *supra*, as to the doubt which led to this enactment. See an order under this section, *Davis v. Chanter*, 4 Jur. N. S. 272. It has been doubted whether the Court has jurisdiction to appoint trustees of personalty where none were appointed by the testator, but the Court has authority to do it by its inherent jurisdiction independently of the Act; *Dodkin v. Brunt*, 6 L. R. Eq. 580. [And it has since been held that the executor or heir must be deemed a constructive trustee so as to give the Court jurisdiction to appoint trustees under the Act; *Re Davis' Trusts*, 12 L. R. Eq. 214; *Re Moore*, 21 Ch. D. 778, and see *Re Smirthwaite's Trusts*, 11 L. R. Eq. 251; *Re Gillett's Trusts*, 25 W. R. 23.]

The Court sitting in Lunacy and in Chancery has power under this section to appoint new trustees of the will of a deceased lunatic, where the trustees appointed by the lunatic have died in his lifetime, for the purpose of getting rid of the funds standing in Court to the credit of the lunacy; *Re Orde*, 24 Ch. D. 271.]

(u) See Trustee Act, 1850, s. 3, and *ante*, p. 1013.

(v) Where four trustees had been appointed, and three died and the fourth was a lunatic, a petition for the appointment of four new trustees was held to be properly intitled under this section in Lunacy only; *Re Owen*, 4 L. R. Ch. App. 782; *Re Mason*, 10 L. R. Ch. App. 273; See Trustee Act, 1850, s. 32, and *ante*, p. 1013, note (e).

(w) See *Re Waugh's Trust*, 2 De G. M. & G. 279; *Re Pattinson*, 21 L. J. N. S. Ch. 280. The doubts there raised as to the jurisdiction of the Lords Justices under the Trustee Act, 1850, were removed by 15 & 16 Vict. c. 87, s. 15 (date of Royal Assent 1 July, 1852), and therefore after the Trustee Extension Act, to which the Royal Assent was given on 30 June, 1852. See *ante*, p. 1013, note (e).

construed as  
part of  
Trustee Act,  
1850.

cording to the definitions and interpretations contained in the second section of the Trustee Act, 1850, and the provisions of the said last-mentioned Act (except so far as the same are altered by or inconsistent with this Act) shall extend and apply to the cases provided for by this Act, in the same way as if this Act had been incorporated with and had formed part of the said Trustee Act, 1850.

All orders  
made under  
Trustee Act,  
1850, or this  
Act, to be  
chargeable  
with the  
same stamp  
duty as  
deeds of  
conveyance.

XIII. That every order to be made under the Trustee Act, 1850, or this Act, which shall have the effect of a conveyance or assignment of any lands, or a transfer of any such stock as can only be transferred by stamped deed, shall be chargeable with the *like amount of stamp duty* as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands, or entitled to such stock; and every such order shall be duly stamped for denoting the payment of the said duty.

County  
Courts.

The 28 & 29 Vict. c. 99, has since been passed, by which it is enacted, by section 1, article 5, that, "in all proceedings under the Trustee Acts, or any of such Acts, in which the trust estate or fund to which the proceeding relates does not exceed in amount or value the sum of 500*l.*," the County Courts "shall have the power and authority of the High Court of Chancery."

# TRUSTS FOR ACCUMULATION.

.

---

BY  
WILLIAM C. SCOTT,  
OF THE PHILADELPHIA BAR.

---

PHILADELPHIA :  
THE BLACKSTONE PUBLISHING COMPANY.  
1888.

.





# TABLE OF CONTENTS.

[The references are to the sections.]

## CHAPTER I.

	SECTION
INTRODUCTION . . . . .	1, 2

## CHAPTER II.

ORIGIN AND HISTORY OF TRUSTS FOR ACCUMULATION . . . . .	3-28
1. Trusts for the Accumulation of Income arising out of Contingent Gifts of Residuary Personal Property . . . . .	3-8
2. Trusts for the Accumulation of Income arising out of Executory Devises of Residuary Real Estate . . . . .	9-20
3. General Summary . . . . .	21-28

## CHAPTER III.

THE RULE AGAINST PERPETUITIES . . . . .	29-50
---	-------

## CHAPTER IV.

ACCUMULATION AT COMMON LAW . . . . .	51-84
1. Trusts for Accumulation too Remote . . . . .	51
2. Trusts for Accumulation in Connection with Estates in Fee-Simple and Absolute Interests in Property . . . . .	52-57
3. Trusts for Accumulation in Connection with Estates in Fee-Tail . . . . .	58-62
4. Trusts for Accumulation in Connection with Estates for Life . . . . .	63-65
5. Vested Interests in General . . . . .	66-73
6. Trusts for Accumulation in Connection with Charitable Gifts . . . . .	74-78
7. Trusts for Accumulation by force of Law during Minorities and Lunacies . . . . .	79, 80
8. Maintenance out of Accumulation during Minorities . . . . .	81-84

## CHAPTER V.

THE ENGLISH AND PENNSYLVANIA STATUTES . . . . .	85-95
1. The English and Pennsylvania Statutes . . . . .	85-91
2. Trusts for Accumulation <i>Dehors</i> the Statutes . . . . .	92-94
3. Division of the Subject of the Consideration of the Statutes . . . . .	95

## TABLE OF CONTENTS.

[The references are to the sections.]

## CHAPTER VI.

	SECTION
TRUSTS AND DIRECTIONS SUBJECT TO THE STATUTES . . . . .	96-134
1. Express and Implied Directions to Accumulate . . . . .	96-105
2. Simple and Compound Accumulation . . . . .	106-113
3. Directions to Accumulate Incidental and Subsidiary to General Trusts . . . . .	114-119
4. Spendthrift Trusts in Pennsylvania . . . . .	120-134

## CHAPTER VII.

STATUTORY LIMITS FOR ACCUMULATION . . . . .	135-155
1. Periods during which Accumulation is allowed by the Thellusson Act . . . . .	135-146
2. The Period during which Accumulation is Permitted under the Pennsylvania Statute . . . . .	147-155

## CHAPTER VIII.

TRANSGRESSIVE TRUSTS FOR ACCUMULATION . . . . .	156-179
1. Provisions for Accumulation which Violate the Statutory Limits . . . . .	156-160
2. Destination of Excessive and Released Accumulation . . . . .	161-179

## CHAPTER IX.

PROVISOS OF THE STATUTES . . . . .	180-194
1. Provisos of the Thellusson Act . . . . .	180-190
2. Provisos of the Pennsylvania Statute . . . . .	190-194

## CHAPTER X.

ACCUMULATION IN OTHER STATES . . . . .	195-213
--	---------

# TABLE OF CASES.

[The references are to the sections.]

## A.

	SEC		SEC
Abbiss v. Burney . . . . .	23	Boynton v. Hoyt . . . . .	204
American Academy v. Harvard College . . . . .	75	Bradley's Will . . . . .	19
Angerstein v. Martin . . . . .	73	Braman v. Stiles . . . . .	54, 57
Armory v. Lord . . . . .	51	Bridgenorth v. Collins . . . . .	101
Arnott v. Bleasdale . . . . .	140	Briggs v. Oxford . . . . .	55, 66, 67
Attorney-General v. Bishop of Oxford . . . . .	74	Broadway Bank v. Adams . . . . .	54, 57, 121
v. Butler . . . . .	75	Brown v. Sancome . . . . .	194
v. Goulding . . . . .	74	Brown v. Williamson . . . . .	132, 156, 158
v. Jolly . . . . .	74	Browne v. Stoughton . . . . .	62, 94
v. Poulden . . . . .	75, 138, 172	Bryan v. Collins . . . . .	101, 102, 145
v. Whitchurch . . . . .	74	v. Knickerbocker . . . . .	199
Axford's Estate . . . . .	179	Bullock v. Stones . . . . .	7, 14

## B.

Bacon v. Proctor . . . . .	55, 66, 67
Barbour v. De Forest . . . . .	204, 206
Barger's Appeal . . . . .	130
Barnitz v. Casey . . . . .	35
Barrett v. Buck . . . . .	174, 190
Barrington v. Liddell . . . . .	171, 173, 181, 182, 187
Bascomb v. Albertson . . . . .	76, 209
Bassil v. Lister . . . . .	119
Bateman v. Hotchkin . . . . .	55, 66, 67
Bean v. Hockman . . . . .	199
Beanland v. Halliwell . . . . .	73
Becktive v. Hodgson . . . . .	101, 156
Beech v. Lord St. Vincent . . . . .	182
Bengough v. Eldridge . . . . .	20, 35, 138
Biddle's Appeal . . . . .	77
Estate . . . . .	191
Blackstone Bank v. Davies . . . . .	54
Blogg v. Johnson . . . . .	194
Bolton v. Jacks . . . . .	202, 204, 207
Boughton v. Boughton . . . . .	51, 94
v. James . . . . .	51, 94
Bourne v. Buckton . . . . .	175, 182, 183, 187
Bowles v. Drayton . . . . .	194

## C.

Cadell v. Palmér . . . . .	20, 33, 35
Cannings v. Flowers . . . . .	81
Carbery v. Cox . . . . .	74
Carey's Will (Sir Nicholas) . . . . .	19
Carson's Appeal . . . . .	94, 109, 155, 159, 164
Carson v. Rutter . . . . .	132
Case v. Drosier . . . . .	61
Cavendish v. Mercer . . . . .	8, 81
Chamberlayne v. Brokett . . . . .	74
Chapman v. Blisset . . . . .	10, 11, 22
Cherry v. Mott . . . . .	74
Clark v. Taylor . . . . .	74
Clulow's Trust, <i>Re</i> . . . . .	164, 168, 184
Cochrane v. Cochrane . . . . .	62
Coit v. Comstock . . . . .	41
Cole v. Sewell . . . . .	59
Colgan, <i>Re</i> . . . . .	84
Conner v. Ogle . . . . .	55
Conrow's Appeal . . . . .	116, 131, 156
Cook v. Lowry . . . . .	207
Coombe v. Hughes . . . . .	164, 168, 170
Copeland v. Gallant . . . . .	91
Corbyn v. French . . . . .	74





[The references are to the sections.]

	SEC		SEC
Otis v. Coffin . . . . .	66	Scattergood v. Edge . . . . .	33
Overman's Appeal . . . . .	122, 124, 127	Scott v. Earl of Scarborough . . . . .	138
<b>P.</b>		v. Monell . . . . .	199, 203
Palmer v. Holford . . . . .	51	v. West . . . . .	210
Parkhurst v. Roy . . . . .	75	Sears v. Putnam . . . . .	54
Parry v. Warrington . . . . .	73	Sergeant, Matter of 129, 131, 151, 164	
Peard v. Kekewich . . . . .	54, 145	Sergeant's Estate . . . . .	155, 172
Pearson v. Dolman . . . . .	54	Sewell v. Denny . . . . .	173, 174
Pennsylvania Co.'s Appeal . . . . .	149	Shaftesbury v. Sir John Webb . . . . .	19
Penrose's Appeal . . . . .	164	Shankland's Appeal . . . . .	124
Perry v. Phelps . . . . .	19	Shaw v. McMahon . . . . .	84
Phelps v. Pond . . . . .	66	v. Rhodes 101, 106, 111, 138, 156,	
Philadelphia v. Girard . . . . .	75, 164	168, 183, 186	
Phillips v. Levy . . . . .	170	Shawe v. Cunliffe . . . . .	5
v. Phillips . . . . .	110	Sidney v. Wilmer . . . . .	145
<i>Re</i> . . . . .	170	Sims v. Quinlan . . . . .	74
Phipps v. Kelynge . . . . .	17, 55, 70	Simmons v. Pitt . . . . .	169, 175
Piercy v. Roberts . . . . .	54, 57	Simpson v. English . . . . .	202
Pleasants v. Pleasants . . . . .	35	Sitwell v. Bernard . . . . .	73
Potter's Estate . . . . .	164, 178	Smith v. Cuninghame . . . . .	51
Potter v. Thornton . . . . .	75	Smith v. Edwards . . . . .	206
Pownall v. Graham . . . . .	33	Smith v. Lomas . . . . .	162, 173
Pray v. Hegeman . . . . .	199, 204, 207, 208	Smith v. Moore . . . . .	54
Pride v. Fooks . . . . .	160, 175, 194	Smyth v. Kinloch . . . . .	101, 164
Pursell v. Elder . . . . .	101, 175	Southampton v. Hertford 51, 62, 67, 70	
<b>R.</b>		Sparkaw v. Cloon . . . . .	54
Ralph v. Carrick . . . . .	101, 175, 190	Stackpole v. Stackpole . . . . .	194
Raphael v. Boehm . . . . .	194	Stair v. Macgill . . . . .	73
Rawlins v. Goldfrap . . . . .	8	Starr, Matter of . . . . .	76, 209
Regina v. Simpson . . . . .	91	Stephens v. Stephens . . . . .	12, 13
Rex v. Briggs . . . . .	91	Stevenson v. Lesley . . . . .	203
v. Pierce . . . . .	91	Stille's Appeal . . . . .	155, 164, 167
Rhoads v. Rhoads . . . . .	54, 69	Stille's Estate . . . . .	193
Rice v. Barrest . . . . .	207	Stott v. Hollingworth . . . . .	73
Robinson v. Robinson . . . . .	10, 207, 208	Streatfield v. Streatfield . . . . .	8
Rocke v. Rocke . . . . .	54, 55	Stretch v. Walkins . . . . .	81
Rogers v. Gibson . . . . .	13, 22	Stuart v. Briere . . . . .	8, 73
Rose v. Rose . . . . .	76, 209	Studholme v. Hodgson . . . . .	6, 7, 21, 98
Rosslyn's Trust . . . . .	136, 156	Swaffield v. Orton . . . . .	54
R. R. Co. v. Dunn . . . . .	90	Sykes v. Sykes . . . . .	61
Ruppert's Estate . . . . .	199, 202, 203	<b>T</b>	
Russell v. Grinnell . . . . .	54, 57	Tainter v. Clark . . . . .	75
Ryall v. Rowles . . . . .	91	Talbot v. Jevers . . . . .	54, 162, 173, 175
<b>S.</b>		Taylor v. Bydall . . . . .	12
St. Aubyn v. St. Aubyn . . . . .	138	Taylor v. Harwell . . . . .	54
St. Paul v. Heath . . . . .	183	Taylor v. Hibbert . . . . .	73
Salkeld v. Johnson . . . . .	91	Tench v. Cheese . . . . .	88, 101, 102, 103
Samuel v. Ellis . . . . .	54	Tewart v. Lawson . . . . .	67, 181
Sanford v. Sackland . . . . .	54	Thellusson v. Woodford 3, 20, 24, 33, 35	
Saunders v. Vautier . . . . .	55, 56, 82	Thompson v. Clendenning . . . . .	197, 203
Savage v. Burnham . . . . .	197, 202, 206	Thorndike v. Loring . . . . .	51, 55
Scarisbrick v. Skelmersdale 51, 62, 67, 94		Thorn v. Coles . . . . .	207
		Thouren's Appeal . . . . .	172, 179
		Thouren's Estate . . . . .	71, 105, 172
		Toms v. Williams . . . . .	210
		Towsend v. Townsend . . . . .	194

[The references are to the sections.]

	SEC		SEC
Tregonell v. Sydenham . . . . .	55	Washington's Estate . . . . .	88, 90, 129, 132, 133, 149, 150, 152, 153, 155, 164, 166, 167, 192
Trevanian v. Vivian . . . . .	7	Watt v. Wood . . . . .	183, 185
Trickey v. Trickey . . . . .	164, 170	Weatherall v. Thornburgh . . . . .	54, 156, 162, 171, 175
Tucker v. Boswell . . . . .	73	Webb v. Webb . . . . .	138, 157, 172
Tucker v. Kayess . . . . .	168	Webb's Will (Sir John) . . . . .	19
Tucker v. Tucker . . . . .	205	Westerfield v. Westerfield . . . . .	206
Turluy v. Massengill . . . . .	54	Wetmore v. Parker . . . . .	76, 209
Turner v. Turner . . . . .	81	Wildes v. Davies . . . . .	173, 175, 183
Turvin v. Newcome . . . . .	51, 62, 94	Williams' Estate . . . . .	105, 112
<b>V</b>		Williams v. Lewis . . . . .	55, 66, 69
Vail v. Vail . . . . .	105, 196, 197, 207	Williams v. Williams . . . . .	66, 75, 206
Van Veecken v. Van Veecken . . . . .	207	Wilson v. Lynt . . . . .	75, 76, 209
Varlo v. Fader† . . . . .	181	Wilson v. Peake . . . . .	194
Vaughn, <i>Re</i> . . . . .	119	Wilson v. Wilson . . . . .	102, 136, 145, 175
Vawdry v. Geddes . . . . .	51	Winder v. Diffenderffer . . . . .	194
Vickers v. Scott . . . . .	73	Wood v. Cone . . . . .	176
Vigor v. Harwood . . . . .	73	Wyndham v. Wyndham . . . . .	5
<b>W</b>		<b>Y</b>	
Wade-Gery v. Handley . . . . .	101	Yates v. Yates . . . . .	207
		Youngs's Settlement, <i>Re</i> . . . . .	54





## CHAPTER I.

### INTRODUCTION.

§ 1. When trustees, their heirs, &c., are seized of an estate of which they are to stand seized until the happening of a certain event or contingency, or until the expiration of a future restricted period, and in the meanwhile are to collect and invest, either in whole or in part, the interest and dividends of the personal property thereof, and the rents and profits of its real estate, as they arise, become due or are paid over to them, and, when finally, the certain event or contingency shall have happened or the limited period shall have expired, to hand over the fund thus accumulated to him or them who, by the law of the trust, may be entitled thereto; the trust thus created is called a Trust for Accumulation.

§ 2. Both the common law and the statutory modifications of that law, affect trusts for accumulation solely in respect of their duration; limiting the time during which accumulation may be continued and within which future interests therein may be created. A discussion of the subject, therefore, of trusts for accumulation is mainly a discussion of the restrictions placed, by the common law and by the statutes, upon their duration. An intelligent and complete discussion of these restrictions, however, requires a knowledge of the origin of such trusts and necessitates a tracing of their growth and development from their inception.

## CHAPTER II.

## ORIGIN AND HISTORY OF TRUSTS FOR ACCUMULATION.

*1. Trusts for the accumulation of income arising out of contingent gifts of residuary personal property.*

§ 3. When speaking of the origin of trusts for accumulation, Hargrave, in his treatise upon the Thellusson Act, says: "The old authorities relating to accumulation of income, whether arising from real or personal estate, are not very numerous; yet sufficient to give a tolerably correct idea of the origin of trusts of this class, and the progress they had made previously to *Thellusson v. Woodford*. They appear to have originated in the construction put by the Courts on those legacies and gifts of residuary personalty, wherein the vesting of the corpus is postponed until a future period, and the intermediate profits and produce of the gift are left undisposed of by the testator. These were held to amount to gifts by implication of the intermediate profits and produce arising from the capital of the legacies, until the contingency happened on which the beneficial interest was directed to vest; and the Courts consequently gave directions that such profits and produce should be accumulated in the hands of trustees, so as to accompany the capital to its final destination."<sup>1</sup>

§ 4. Consequently the rule has been established that where a residuary legacy is given upon a contingency and the intermediate interest, profits and produce arising from the capital of the legacy between the testators' death, if there be no previous legatee for life, or if there be, then between the death of such previous taker, and the happening of the contingency upon which the vesting of the beneficial interest depends, are left undisposed of by the testator: the surplus intermediate interest, after, in a proper case, providing for the maintenance of the legatee, will fall into the residue to be accumulated in the hands of the executors as trustees, for the benefit of him in whom the corpus of the legacy will finally vest. Or, in other words, it was held that there was an implied direction on the part of the testator to create a trust for the accumulation of the surplus intermediate interest for the benefit of the contingent and residuary legatee.

§ 5. But when a particular and specific legacy is given upon a contingency and the intermediate interest is left undisposed of by the testator, the surplus intermediate interest, after, in a proper

---

<sup>1</sup> Harg. Thel. Act, §§ 24, 25.  
(1278)

case, providing for the maintenance of the legatee, in this case will sink into the residue, either for the benefit of the executor or next of kin of the testator, if the residue is not bequeathed by him; or, if the residue is disposed of by the testator, for the benefit of his residuary legatee.<sup>1</sup> And the interest cannot be accumulated unless the court is satisfied that the testator intended accumulation.<sup>2</sup>

§ 6. The earliest reported instance of a trust for accumulation arising out of contingent residuary legacies is *Studholme v. Hodgson*<sup>3</sup> before Lord C. Talbot in the year 1734. In this case a testator devised the residue of his personal estate to A., an infant, and if A. died during his infancy and his mother should die without any other children then to B. A. died during infancy, though the mother was living and might have a child. The court decided that the profits and income of the said residue, from the death of A. until the contingency happened should be accumulated and added to the capital; and, if there should be no child of the mother, then they should go to B. It is interesting to notice that, in this early case, Lord Talbot drew a distinction between the right to the surplus intermediate profits and produce of personal property and a similar right to the surplus intermediate rents and profits of real estate, insisting that the latter was impossible owing to the common law rule that the freehold could not be kept in abeyance, but must vest in somebody; whereas, the former was possible, as there was "no such rule with regard to personal estates which may remain in suspense." But he subsequently had cause to modify this statement, for by the introduction of trusts for accumulation, this rule, with respect to trusts or equitable estates, has been wholly rejected.

§ 7. This case was followed by the case of *Green v. Elkins*<sup>4</sup>, before Lord Hardwicke, in the year 1742. In this case the testator, after directing that his trade should be carried on for the benefit of those who should be entitled to the residue of his estate, bequeathed the residue of his personal estate to any son he should have by his wife at twenty-one, and if no son, then to his younger daughter, to be paid at twenty-one or marriage; but if she should happen to die before her age of twenty-one years or unmarried, and his elder daughter should have one or more sons, then the testator bequeathed his said personal estate to such son of his said daughter as should first attain the age of twenty-one years; but if his daughter should have no such son, or having such none should attain twenty-one years, then he gave the residue over. The younger daughter died under twenty-one and unmarried. Lord Hardwicke, following *Studholme v. Hodgson*,<sup>5</sup> decreed that the income and

<sup>1</sup> *Wyndham v. Wyndham*, 3 Bro. C. C. 57; *Shawe v. Cunliffe*, 4 Bro. C. C. 144; *Haughton v. Harrison*, 2 Atk. 329.

<sup>2</sup> *Harvey v. Cooke*, 4 Russ. 34.

<sup>3</sup> 3 P. Wms. 305.

<sup>4</sup> 2 Atk. 473; 3 P. Wms. 305.

<sup>5</sup> See § 6, *ante*.

profits of the said personal estate, from the death of the testator's younger daughter should be accumulated and added to the said residue, so as to go to him to whom that residue was finally to be paid, and he ordered that the accumulation should continue until a son of the elder daughter attained twenty-one years, or until such daughter died without leaving male issue. Lord Hardwicke said: "There are many material differences between the profits of a real and a personal estate; for, in the case of real estate, the thing itself is not disposed of, but descends in the meantime; and the heir has, therefore, a chattel interest till the contingency happens, and carries the profits with it. But personal estate does not descend, or go to the next of kin, but is vested in the executor, and this is a question only relating to the trust of it where the intent of the testator must prevail. Another difference between them is, that in the one case the rents never could become part of the personal estate, but the profits of the personal estate are the estate itself."<sup>1</sup>

§ 8. In *Mole v. Mole*<sup>2</sup> (1758), a testator bequeathed the residue of his personal estate to his infant son, with an express direction that the interest thereof should be accumulated until his son attained the age of twenty-one; and if the son died before that age then over to A. B. Although the case came before the Court on the question of maintenance, nevertheless the direction to accumulate was admitted to be perfectly valid. This case is an early instance of a trust for the accumulation of income arising out of contingent gifts of residuary personalty and created by the express direction of the testator, and it is important as illustrative of the general predilection for accumulation, traces of which are constantly to be found in instruments bearing date about this period.<sup>3</sup>

2. *Trusts for the accumulation of income arising out of executory devises of residuary real estate.*

§ 9. In the well known case of *Hopkins v. Hopkins*<sup>4</sup> decided at different times between the years 1733 and 1774, a testator had devised his real estate to trustees and their heirs, to the use of them and their heirs upon trust for Samuel Hopkins (the only son of J. H., the cousin and heir-at-law of the testator), for his life, and after his decease in trust for the first and other sons of his body suc-

<sup>1</sup> See also *Butler v. Butler*, 3 Atk. 58 (1743); *Trevanion v. Vivian*, 2 Ves. 430 (1752); *Bullock v. Stones*, 2 Ves. 521 (1754); *Gibson v. Rogers*, 1 Ves. 485 (1750).

<sup>2</sup> 1 Dick. 310.

<sup>3</sup> See also *Streatfield v. Streatfield* (1735), For. cases, temp. Talb. p. 176; *Cavendish v. Mercer* (1776), 5 Ves. 195, note (a); *Fendall v. Nash* (1779), 5 Ves. 197, note (a); *Hawkins v. Coombe* (1783), 1 B. C. C. 335; *Stuart v. Bruere* (1794), 6 Ves. 529, note (a); *Entwistle v. Markland* (1795), 6 Ves. 528, note (a); *Greenwell v. Greenwell* (1800), 5 Ves. 194; *Rawlins v. Goldfrap* (1800), 5 Ves. 440.

<sup>4</sup> For. cases, temp. Talb. 44-50; 1 Atk. 581; 1 Ves. Sr. 268; West, 606; Co. Lit. 271 b., Butler's note 1739.

cessively in tail male, and in default of such issue, "in case his said cousin, John Hopkins, should have any other son or sons of his body lawfully begotten, then in trust for all and every of such other son and sons respectively and successively, for their respective lives, with the like remainders to their several sons, successively and respectively, as were therein-before limited to the issue male of the said Samuel Hopkins, son of the said John Hopkins; and for default of such issue then in trust for the first and every other son of the body of Sarah, the eldest daughter of the said cousin John Hopkins, lawfully to be begotten, successively and according to priority of birth, for their respective lives; with remainders to the heirs male of the body of every such son respectively and successively, the elder and the heirs male of his body to take before the younger and the heirs male of his body issuing; and, for want of such issue, then in trust for the first and every son of the body of Mary, the second daughter of his said cousin John H., &c., with remainders as before; and for want of such issue, then in trust for the first and every other son of the body of Hannah, the youngest daughter of his said cousin John H., &c., with remainders as before; and in default of such issue, then in trust for the first and every other son of his cousin Hannah D., the wife of Francis D., successively and respectively for their respective lives, with remainders as before; and for want of such issue then in trust for James B. for life, with remainders as before; and in default of such issue, then in trust for his own right heirs forever." With a proviso, that whoever should come to his estate should take his surname and arms, to which is added the following direction: "Provided also, and it is my will that none of the persons to whom the said estates are hereby limited for life shall be in the actual possession thereof, and in the enjoyment of the rents and profits or of any or other part thereof, than as hereinafter is mentioned, until he or they shall respectively attain his or their ages of twenty-one years, and in the meantime and until his or their attaining such age, my trustees, and their heirs and executors, shall make such allowances thereout for the handsome and liberal maintenance and education of such person and persons respectively, as they shall think suitable and agreeable to his estate and fortune; and it is my will that the overplus of the said rents and profits over and above the annual allowances or such part thereof, as shall remain after all my debts, legacies and funeral expenses shall be first paid, do go to such persons as shall be first entitled unto or come into the actual possession of my said real estate, according to this my will."<sup>1</sup> The testator, also, after giving a great number of legacies, gave the rest and residue of his personal estate, which was very large, to his executors as trustees, in trust to be invested by them in the purchase of real estate, to be settled upon the same uses and trusts, and subject to the same pro-

---

<sup>1</sup> For. Cas. temp. Talb. p. 44, 45.  
(1281)

visos, as he had declared in his said will of his real estate. Samuel H., the son of John H., the testator's cousin, died in the testator's lifetime without issue; and at the testator's decease John H. was the testator's heir-at-law, and had no male issue, but only the four daughters aforesaid. A suit was instituted to establish the trust of the testator's will, and by the decree made by Lord Talbot in the first stage of the cause in 1734, it was in the first place declared that, during the suspense which took place until John H. should either have another son, or until by his decease without other issue (if that event happened), the possibility of his having another son should have determined, the limitations were good and valid as executory devises. In the second place Lord Talbot decided, that, since the words of the will restrained the issue from having anything to do with the estate until they attained twenty-one years, and since there was no provision as to what should become of the rents and profits until a son should be born; therefore, until the beneficial interests vested under the limitations, that is, until somebody was *in esse* to take under the executory devise, created by will, the intermediate rents and profits were to be considered as "residue undisposed of" by the testator, and must consequently descend to the heir-at-law. It is evident from this case that Lord Talbot considered accumulation during the minority of an unborn tenant in tail to be good; and it was at least tacitly recognised that it was possible to direct an accumulation of the rents and profits of real estate which could continue and of which the beneficial ownership could be suspended as long as the law would allow the beneficial ownership of the estate out of which such accumulations issue, to be postponed.

§ 10. In June, 1736, John Hopkins had another son, William, who died in the following December; but during his life an accumulation took place under the court as decreed in Lord Talbot's opinion. There being no issue male of John Hopkins, or any of his daughters, the eldest son of Hannah D., the first tenant for life then *in esse*, brought a bill claiming to be entitled to the estates devised, and to be purchased with the surplus of the personalty as tenant in tail male. But it was held by Lord Hardwicke, <sup>1</sup> in 1738, that there was a sufficient estate in the trustees under the will to support the contingent remainders to the male issue of John Hopkins, and of his daughters living at the testator's death, and that the plaintiff was not entitled to the relief sought by his bill. In this case Lord Hardwicke discussed the question whether a future equitable interest was a contingent remainder or an executory devise, and held it to be a contingent remainder. He here held that a legal estate in trust was sufficient to support contingent remainders.<sup>2</sup> But if there are no trustees to sustain them the common law

<sup>1</sup> Hopkins v. Hopkins, West 606.

<sup>2</sup> See also Chapman v. Blisset, West 328, post § 11, and Robinson v. Robinson (1750), 2 Ves. Sr., 226.

requires that contingent remainders must vest during the continuance of the particular estate or *eo instanti* that it determines, on the ground that a freehold cannot be in abeyance, because there must be a tenant to perform services, &c. Whereas in the case of a trust estate as the trustees are tenants of the freehold to perform services, &c., the rule does not apply, and the contingent remainders, being equitable, and wanting the essential characteristic of a legal contingent remainder, viz., the need of a freehold to support it, can be supported by the legal estate of the trustees. Mr. Gray says:<sup>1</sup> "Now it is this very characteristic which requires a legal remainder to vest, if at all, at the termination of a life estate. Lord Hardwicke's judgment therefore amounts to this: that the limitation in question, if legal, would be a contingent remainder, but that in equitable estates there is no difference between contingent remainders and executory devises."

§ 11. In *Chapman v. Blisset*<sup>2</sup> decided by Lord Talbot in the year 1735, a testator devised certain estates, real and personal, to trustees in trust to pay certain yearly payments to his son B., and if he marry with consent, and have issue, he gave the rest and residue of the yearly rents and profits of the said trust estate, to be applied during the life of his son, for the education and benefit of his children. After his son's decease, one moiety of the trust estate was devised to the children his son should leave, and the other to the children of his grandson C. Lord Harcourt decreed the rents and profits of the estate over and above the annual payments, to be improved, from the testator's death to the birth of a child of his son, for the benefit of such child. The cause coming on again before Lord Cowper, he on the contrary, decreed that the improved surplus, rents, and profits, between the periods above mentioned, should go in augmentation of the surplus to be divided. These two distinguished Judges did not differ, therefore, upon the right of a testator to direct the accumulation of the rents and profits of real estate, but on the point, whether the testator had actually done so.<sup>3</sup> The testator died; B. married and had issue, a son and a daughter, and died. The cause coming on to be reheard before Lord Talbot, two questions were presented. First, whether the children of C. took by way of executory devise or contingent remainder, and second, what should become of the surplus of the real and personal estate of the testator from his death until the birth of B.'s first child? It was held that the limitation to the daughter of C. was well supported by the estate in the trustees; or, if not, was good as an executory devise. Lord Talbot said that "in regard to trusts, the rules are not so strict as at law; for, the whole legal estate being in the trustees, the inconveniency of the freeholds being in abeyance, if the particular estate determines before the contin-

<sup>1</sup> Gray on Rule against Perpet. § 325, note (1); see also §§ 322-326.

<sup>2</sup> For. Cas. temp. Talb. 145.

<sup>3</sup> Randell on Perp. p. 198.

gency (upon which the remainder depends) does happen, is thereby prevented; there being always a sufficient tenant to the præcipe; the defect of which was the sole mischief the law provided against. And even the reason is not now so strong, as when real actions, which can be brought against the tenant of the freehold only, were more in use. The whole, therefore, being in the trustees, supports the several uses that are to arise out of their interest, which continuing in them until the birth of the plaintiff (the daughter of C.), whether it be taken as a future limitation, or as a contingent remainder of a trust, is good either way."<sup>1</sup> Upon the second question Lord Talbot agreed with Lord Harcourt, and held that the surplus of the intermediate profits from the time of the death of the testator until the birth of B.'s first child, should go to the children of B., for the testator had expressly given it to them by the effect of the words "rest and residue" contained in his will.

§ 12. In *Stephens v. Stephens*<sup>2</sup> (1736), there was a devise of a fee after the death under twenty-one of devisees who might not be in existence at the death of the testator. Lord Hardwicke and the other judges of the King's Bench certified, and Lord Chancellor Talbot decided, principally upon the authority of *Taylor v. Bydall*,<sup>3</sup> that such a devise was good by way of executory devise and would not lead to a perpetuity.<sup>4</sup> There was also a residuary devisee, to whom it was held that the intermediate rents and profits of the estate, until the executory devise vested, belonged, as an interest in the testator's estate not before bequeathed or disposed of by the will.

§ 13. In *Rogers v. Gibson*<sup>5</sup> (1750). A testator devised "all and singular his freehold, leasehold, copyhold and also personal estate of what kind soever to trustees," in trust to and for several uses, to pay certain annuities, &c., and as for and concerning "all the rest, residue and remainder" of the real and personal estate of what nature and kind soever, after provision being made for the payment of the legacies, &c., he gave to such child or children, as his daughter should have lawfully begotten, whether male or female, equally to be divided between them; if his daughter should die without such issue, then to two other persons equally to be divided between them share and share alike." It was held by Lord Hardwicke, principally upon the authority of *Stephens v. Stephens*<sup>6</sup> that the surplus intermediate profits of both the real and personal estate, from the death of the testator until the birth of a child of his daughter should pass under this executory devise of the "rest

<sup>1</sup> See also West. 328, for Lord Hardwicke's opinion.

<sup>2</sup> For. Cases, temp. Talb. 228; W. Kel. 168; 2 Barnard K. B. 375.

<sup>3</sup> 2 Mod. 239; Freem. K. B. 243.

<sup>4</sup> For the effect of this case upon the development of the rule against perpetuities by extending the rule so as to cover minorities, see Gray, on Perp., §§ 171, 172, 175, 186-188.

<sup>5</sup> 1 Ves. Sr. 485.

<sup>6</sup> Ante, § 12.



and residue," and that such intermediate profits should be received by the trustees, accumulated and laid up until the estate vested in interest, for the benefit of the executory devisee, who was also the residuary devisee, and who would be determined either by the birth of a child of the daughter, or by the death of the daughter without children.

§ 14. In *Bullock v. Stones*<sup>1</sup> (1754), a testator devised all his real and personal estate to a trustee, in trust for the first son of A. when he shall attain twenty-one, with a direction for his proper maintenance and education. It was held by Lord Hardwicke that the devise was a good executory devise, but not being of the "rest and residue," the surplus intermediate rents and profits of the real estate from the death of the testator, until A., then an infant, should have a son, should go to the heir-at-law, after which they should be applied to the maintenance and education of such son until he should attain twenty-one; but the surplus intermediate profits of the personal estate were directed to be accumulated until A. should have a son and that son should attain twenty-one, for the benefit of the executory devisee.

§ 15. These cases, without doubt, have established an analogy between the period to which the vesting of an executory devise might be postponed and the duration of a valid trust for accumulation, and the same policy of the law which limits the time within which future interests can be created will be applied by the courts to prevent protracted accumulation.<sup>2</sup>

§ 16. In *Lade v. Holford*<sup>3</sup> (1763), A. by his will, devised land to trustees and their heirs to the use of B. for life, remainder to the use of B.'s first and other sons in tail male successively, with remainder over; with a proviso, that during the time B. the first tenant for life should be under the age of twenty-six years, "and so often and during such time, as the person who for the time being (in case he had not otherwise directed) would, by virtue of the said will, have been entitled in possession to the devised premises as tenant for life or in tail, shall be under the age of twenty-six, the trustees and their heirs shall and may enter on the premises, and take the rents and profits" and maintain out of them the tenant in possession by paying certain sums to such person, until he attain twenty-six years; and accumulate the residue of the rents, and invest the accumulation in the purchase of lands to be disposed of as the residue of the testator's personal estate is thereby directed to be disposed of, viz., to be laid out in lands and settled as the estate before devised. B., the first tenant for life, died, leaving his wife *enceinte* a son C., who was the first tenant in tail under the will, on whose behalf a bill was filed, on the ground<sup>4</sup> that he being tenant

<sup>1</sup> 2 Ves. Sr. 521. See also *Gray on Perp.*, § 175.

<sup>2</sup> See following section.

<sup>3</sup> 1 W. Bl. 428; 3 Burr. 1416; Ambl. 479; *Fearne*, C. R. 530, Butler's note.

<sup>4</sup> 3 Burr. 1417.

in tail, the proviso of limitation to the trustees, to take from him the profits of the estate for the purpose of accumulation, was contrary to the policy of the law, and therefore void. It was argued that the proviso was void as tending to a perpetuity, not, however, because the trustee's estate might come into existence at too remote a period, but "by taking away the power of alienation five years longer than the policy of the law admits;" and also because it was "in derogation of the legal powers of tenant in tail."<sup>1</sup> A case was directed to the Court of King's Bench for their opinion, on the question whether on the birth of C. the trustees took any estate in the premises devised, by virtue of the above proviso. The Judges certified and Lord Chancellor Northington confirmed their certificate, saying that "the directions and provisions in the testator's will, by which he attempted to direct the accumulation of the rents and profits of his real estate being repugnant to the limitation of an estate tail to" C., "were void, and ought not to be carried into execution."<sup>2</sup> Mr. Fearne says this case seems to fall within the rule "that estates shall not cease as to part, and vest and re-vest."<sup>3</sup> But Mr. Butler remarks that "the real objection to the limitation in the proviso was, that it directed a dry accumulation of the surplus rents, for a period of twenty-six years; this exceeded the period, for which the law allows such an accumulation to be continued; and in this sense, the proviso was repugnant to law, and void."<sup>4</sup> Mr. Gray says, "Lord Northington's remark supports Mr. Fearne's view that the case was decided, not on the ground of remoteness at all, but of repugnancy. And the argument of the counsel and the language of Mr. Butler show that the objection of remoteness arose from the accumulation being ordered for twenty-six years, and that had it been confined to twenty-one years, the proviso would not have been considered obnoxious to the rule against perpetuities." But in another place he says the case "is so obscurely reported that it is impossible to tell the ground on which it was decided."<sup>5</sup> Mr. Randell, in his treatise on Perpetuities,<sup>6</sup> says, In this case "it is evident, that notwithstanding the objection that the proviso was derogatory to the estate of tenant in tail, the direction for an accumulation, exceeding, by five years, the time allowed by the rule of law, was a tenable ground of opposition. If the plaintiff had been born during the life of the testator, I conceive this objection to the proviso would not have been removed; for a limitation cannot be rendered good by events, it must be so on its creation, or it will be void. Therefore, in order to try whether in such a case it would be good, we have to inquire, whether, by force

<sup>1</sup> 1 W. Bl. 429.

<sup>2</sup> Fearne, C. R. 530, Butler's note.

<sup>3</sup> Fearne, C. R. 530.

<sup>4</sup> Fearne, C. R. 530, Butler's note.

<sup>5</sup> Gray on Perp. § 464, note (2).

<sup>6</sup> Randell on Perp. p. 203.

of the proviso, it might not occur, that the accumulation would be carried on beyond the time allowed by law. If then the plaintiff, who we are supposing to have been born during the life of the devisor, had died under twenty-six, leaving his wife *enceinte* of a son, the accumulation, by the effect of the proviso, must have been carried on till such unborn issue attained twenty-six years. And though the plaintiff might have attained his age of twenty-six years, at which age he would have been enabled, by a common recovery, to have barred the proviso, and so the suspension might not have lasted more than twenty-six years of a life in being, yet, a possibility of this kind was never allowed to be an answer to the objection, that the trust, as originally created, was too remote."<sup>1</sup>

§ 17. In *Phipps v. Kelynge* <sup>2</sup> (1767). A testatrix, by her will, gave certain leasehold estates to her son in trust, from time to time during the term of years therein, to lay out the yearly profits in the purchase of lands of inheritance, and to settle the same to the use of A., during his life, remainder to the use of trustees to preserve contingent remainders, remainder to the first and other sons of A. successively in tail male, with several remainders over. A. had a son B. who attained twenty-one years of age; and the question was, to what extent, in point of time, the accumulation, and investing the rents, was good? It was decided "that the trust declared by the will of accumulating the rents of the leasehold estates, to be laid out in the purchase of lands to be settled as therein directed, ceased and became void on the said son's attaining twenty-one years of age, the law not permitting a leasehold interest to be settled, unalienably, beyond the time of the first unborn person entitled thereto, his or her arriving at the age of twenty-one years"<sup>3</sup> In this case the rents and profits, although directed to accumulate, were applicable as a vested interest *de anno in annum*; the *cestui que trust* could at any time call for the investment of the rents in land and when B. attained his age and could suffer a recovery, A. and B. were entitled to call for the assignment of the lease. Therefore the ground upon which this trust was held good seems to be that the direction to accumulate, being destructible at any time, could not have been considered obnoxious to the objection of remoteness.<sup>4</sup>

§ 18. In *Harrison v. Harrison* <sup>5</sup> (1787), a testatrix devised certain estates, by way of executory devise, to the second son of A., testatrix's niece; and further directed trustees to accumulate the rents and profits of said estates, until said son should attain twenty-one years; and if no such son, then until a second son of another niece, should also attain twenty-one years. It was held that the will should be established and directions were given for carrying the

<sup>1</sup> See §§ 58-62, *post*.

<sup>2</sup> Fearne's C. R. App. No. V. p. 616, 2 V. & B. 57, note b.

<sup>3</sup> Fearne's C. R. App. No. V. p. 616.

<sup>4</sup> See §§, 52-56; 70.

<sup>5</sup> 4 Ves. 286, 287, 288.

trusts into execution including the accumulation of the rents and profits of the estate.

§ 19. In addition to the above cases the following cases of trusts for accumulation commensurate with the executory devise were cited in the argument of *Thellusson v. Woodford*. *Perry v. Phelps*<sup>1</sup> (1788); *Sir John Webb's will*<sup>2</sup> (1799); *Bradley's Will*<sup>3</sup> before Lord Thurlow, which created an accumulation for charitable purposes; and also the trust for accumulation for discharging debts and incumbrances arising from the will of Sir Nicholas Carey.

§ 20. Finally, the great case of *Thellusson v. Woodford*<sup>4</sup> (1798-1805) arose; a testator, after making what he considered a sufficient provision for the comfort and claims of his family, devised and bequeathed all the manors, lands, and hereditaments, for the purchase of which he had contracted, and all other his real estates whatsoever and wheresoever, and also all the estates and hereditaments in and upon which his trustees should, as directed by his said will, invest his residuary personal estate, to three trustees named in the will, so as to vest the legal fee simple thereof in them, upon trust, from time to time, during the natural lives of his three sons, and of the sons of each of his said sons then in being or thereafter to be born to any of his said sons, and of such issue as any of his grandsons might have, as should be living at the time of his decease or born in due time afterwards, and during the natural lives of the survivors or survivor of the said several persons, to collect and receive the rents and profits of all the said real estates, as well as those to be so purchased by his said trustees as aforesaid, as those expressly devised to them by his will, and from time to time to lay out and invest the said rents and profits in and upon the purchase of such other real estates as he had directed to be purchased by his trustees with his said personalty; and also from time to time to collect and receive, and lay out and invest the rents and profits of such last-mentioned estates in a similar manner in the purchase of real estates to be held upon the trusts of the will." He also directed the trustees to cut timber, and to invest the produce in the same manner. The testator then directed, that after the decease of the survivor of the several persons aforesaid, all the said originally devised and accumulated estates should be divided into three lots of equal value; one of which should be conveyed by the trustees to the eldest male lineal descendant, then living, of his eldest son in tail male, with remainder to the second, &c., and all and every other male lineal descendant of his said eldest son successively in tail male, with re-

<sup>1</sup> 4 Ves. 108 and 288. See also 10 Ves. 34.

<sup>2</sup> 4 Ves. 287. See also *Shaftsbury v. Sir John Webb*, 7 Ves. 480 (1802); 6 Mad. 100 (1821); 3 Myl. & K. 599 (1834).

<sup>3</sup> Vide Introduction to *Martin's Conveyancing*, Vol. 2, part 1, p. 34, and *Harg. Jurid. Arg.* Vol. 2, pp. 70, 162, 163.

<sup>4</sup> 4 Ves. 227-343; 11 Ves. 112-151; 1 New Rep. 357-399. The history of the *Thellusson* litigation is given in the first chapter of *Hargrave's Treatise on the Thellusson Act*.

mainder, in equal moieties, to the eldest and every other male lineal descendant of his two other sons, as tenants in common, in tail male; with cross remainders between them, with remainder to the trustees, their heirs and assigns, upon the trusts thereafter mentioned. The two other lots are similarly limited, the one to the eldest male lineal descendant, then living, of the testator's second son, in tail male, &c., and the other to that of the testator's third son, in tail male, &c. The two other sons entitled in remainder, being those to whose issue the estate or lot is not principally and in the first place given. The testator then directed, that, if there should be a general failure of all the male descendants of each of his said sons, at the time aforesaid, or in case the persons who should become entitled under the said limitations, to any of the said estates "should fail to use the surname of Thellusson alone," then the trustees should convert the estates into money, and apply the same to the use of the sinking fund, in such manner as should be directed by the act of Parliament. The testator died in 1797, leaving his said three sons and six male grandchildren, two of whom were twins, and *in ventre matris* at the testator's death. Lord Loughborough, assisted by Lord Alvanley, M. R., and Buller and Lawrence, JJ., gave a decree in favor of the trusts, declaring them to be good and valid, and the House of Lords, on the unanimous opinion of the judges, affirmed the decree. The eccentricity of the will excited great interest in the case and the immensity of the property involved urged the attempt to impeach the trusts, rather than any doubtful ground of construction appearing on the face of the will or any solid legal doubt as to the applicability of the rule of law, limiting the time allowed for executory devises to take effect, to the duration of a trust for accumulation. The arguments were of the most elaborate character and the judges did not conceal their dislike of the will, but no one of the many eminent lawyers who took part in the decision seems to have felt any doubt in the case. "Unfortunately not one crevice could be detected in this project of inordinate ambition, vanity and avarice, through which the law could enter and overturn the fabric from its foundation"; the eccentricity of the trust the Court would not entertain, and on the ground of vagueness there was no hope for relief to the heirs. Every device was tried even to the extent of renewing the argument upon the question of the discretionary or rather legislative authority over the executory devise which had been claimed by Lord Nottingham in the Duke of Norfolk's Case.<sup>1</sup> But finally they all failed, the will was established and the trust recognized. In this case it was decided, that accumulation might lawfully endure by force of the testator's direction alone, during the life of the survivor, out of nine specified persons *in esse* at the death of the testator.<sup>2</sup> And the rule

<sup>1</sup> 3 Ch. Cas. 49.

<sup>2</sup> For a history of the extension of the rule against perpetuities so that any number of lives in being might be taken to compose the period during which

was established that a testator, by his own direction, could create a trust for accumulation which could lawfully continue during any time within the limits allowed by the rule against perpetuities, if created by way of executory devise, and that the vesting of the beneficial ownership of the accumulations, as well as of the estates out of which such accumulations issued, could be postponed during the whole time that an executory devise could be kept from vesting<sup>1</sup>.

### 3. General Summary:—

§ 21. From the preceding inquiry it will appear that the origin of the Trust for Accumulation can be traced to the custom of the early Courts to decree, where the will authorized it, an accumulation of the undisposed of surplus intermediate income arising out of certain contingent gifts or legacies of residuary personal property bequeathed to an infant *in esse* at the death of the testator, if or when he attains twenty-one years of age, for the benefit of him who should finally become entitled to the corpus of the estate out of which such accumulations issue.<sup>2</sup>

§ 22. Primarily the dispositions from which accumulation arose included only legacies of residuary personal property, but they soon took a wider range and were extended so as to include also devises of residuary real estate, the accumulation being directed by the Court because the will contained an implied intent to that effect under cover of an executory devise of the "rest and residue."<sup>3</sup> The trust for accumulation, which originally engrossed only the surplus income during the minority of an infant *in esse* at the death of the testator, was also extended so as to cover the entire income and during periods much longer than a minority.

§ 23. Upon principles founded on the Law of Tenure the freehold in *presenti* must be vested in some person *in esse*. And it has been remarked,<sup>4</sup> that in all the innovations introduced into the English law of real property by the Statute of Uses, the rule, that the freehold should never be in abeyance, has been retained. But with respect to trusts or equitable estates, which are wholly independent of feudal rules, this common law rule appears to have been

---

the creation of future estates would be lawful, and for the effect of *Thelluson v. Woodford* upon that extension, see *Gray on Perp.*, §§ 189, 190.

<sup>1</sup> At the time of the decision in *Thelluson v. Woodford* the rule against perpetuities had not been extended so as to cover a term in gross of twenty-one years. This extension was not settled until the decision in the case of *Bengough v. Edridge* (1826), 1 Sim. 173; S. C. in Dom. Proc. sub. nom.; *Cadell v. Palmer* (1832), 1 Cl. & F. 372; 7 Bl. N. S. 202; 10 Bing. 140. With this exception the common law period within which a future interest could lawfully be created was the same in 1798 as it is at present.

<sup>2</sup> *Studholme v. Hodgson* (1734), 3 P. Wms. 305; § 6 ante.

<sup>3</sup> *Chapman v. Blisset* (1735), For. Cas. temp. Talb. 145; *Rogers v. Gibson* (1750), 1 Ves. Sr. 485; ante, §§ 11, 13.

<sup>4</sup> Butler's note to Co. Lit. 290 b. sect. 17.

wholly rejected, because the principles which gave rise to the rule at common law do not apply to the law of contract or moral obligation upon which the law of trusts is founded; the legal estate remains in the trustees and answers every purpose the common law can require. By means of a trust, therefore, a settlor may give binding directions for an accumulation of rents and profits arising out of real estate and the trust is not vitiated because there is no ascertained owner of the equitable freehold in possession.<sup>1</sup>

§ 24. The manner in which the executory devise was associated with the trust for accumulation is peculiar. It was rather by means of a passive acquiescences on the part of the Court, than by a bold assertion of the right to such an alliance, that the association was allowed to exist; no objection ever having been taken either by the Court or by counsel to the legality of extending the executory devise to trusts for accumulation until the case of *Thellusson v. Woodford*,<sup>2</sup> except in the case of *Harrison v. Harrison*,<sup>3</sup> when it was raised in argument but without success.

§ 25. We have seen that there are cases in which accumulation has been directed by the Court because the will contained indications of such an intent, but there are also cases in which accumulation has been directed because the testator expressly directed it. And it seems probable that from this early practice of creating a trust for accumulation from the implied directions of a testator, the idea of directing an express trust was suggested. But in every case where a trust for accumulation has been directed by the express direction of the testator the attention of the Court has been so particularly called to the legality of the duration of the accumulation directed, as to fix the period beyond which such accumulation was not to extend. In fact the only real doubt which ever appears to have existed upon the subject of trusts for accumulation at common law has been to what extent these trusts should be allowed.

§ 26. By the decisions upon these early cases in which the accumulation of income, arising out of executory devises of residuary real estate, was directed by the Court, an analogy was soon established between the period to which the vesting of an executory devise might be postponed and the duration or legal continuance of a valid trust for accumulation. If, therefore, a trust seeks to suspend the vesting of the beneficial ownership of accumulated income, or of the estate out of which such accumulations issue, longer than the period allowed by the law limiting the time within which future interests can be created, it is contrary to the policy of the law and therefore void.

§ 27. No inconvenience, however, appears to have been felt in

<sup>1</sup> *Fearn's C. R.* 537, *Butler's note* (x); 3 *Atk.* 205; *Abbiss v. Burney*, 17 *Ch. D.* 211.

<sup>2</sup> 4 *Ves.* 227-343; 11 *Ves.* 112-151; § 20 *ante*.

<sup>3</sup> 4 *Ves.* 286, § 18 *ante*.

allowing so wide a range of accumulation, few persons having availed themselves of the permission to a mischievous extent. And at no time in the history of Trusts for Accumulation had testators attempted to go to the full limits allowed by the law in their directions to accumulate, and up to the time when Mr. Thellusson launched out in his bold experiment and made the extraordinary and well-known disposition of his immense property there had been no attempt to grasp at more than a life or at most two lives and a minority ; such life or lives being even then the life or lives of the parent or parents of the person beneficially entitled.

§ 28. We have seen from this review, therefore, that the origin of the Trust for Accumulation was of quite recent date at the time when Mr. Thellusson made his eccentric and now famous will, and that the history of this trust, which, as has been said <sup>1</sup> "originally had intrusively crept in and stole upon the judgment of the court," but which, at the time of its creation, was acknowledged to be a necessary convenience, is the history of its uninterrupted growth and development from the time of its inception down to the time when its progress was checked by the curb of statutory enactment.

---

<sup>1</sup> Butler's note to Co. Lit. 290 b., sect. 17.



## CHAPTER III.

### THE RULE AGAINST PERPETUITIES.

§ 29. THE whole subject of trusts for accumulation, both at common law and under statute, being intimately connected with the rule against perpetuities, it is considered advisable to set forth the precise terms of that rule. The rule against perpetuities is the law, in the absence of statute, limiting the time within which all future interests can be created. Mr. Gray, in his treatise on the rule against perpetuities,<sup>1</sup> says that the true form of the rule is believed to be as follows: "No interest subject to a condition precedent is good, unless the condition must be fulfilled, if at all, within twenty-one years after some life in being at the creation of the interest." This rule is judge-made law and has gradually arisen from a long series of judicial decisions far too numerous to be even quoted here.<sup>2</sup>

§ 30. The rule against perpetuities governs both legal and equitable interests and interests in both real and personal property. A vested interest is never subject to the rule, but a contingent interest not only may be, but often is.<sup>3</sup> Only equitable interests can arise out of trusts for accumulation.

§ 31. Besides other interests subject to the rule,<sup>4</sup> the rule governs all future equitable interests, either in real or personal property, not vested. "There are, strictly speaking," says Mr. Gray,<sup>5</sup> "no equitable reversions or remainders. The so-called reversions are resulting trusts, and a remainder implies the presence of seisin and tenure, which are conceptions foreign to equitable interests. But to determine whether equitable interests are vested for the purpose of judging of their remoteness, they are to be considered as if they were legal interests." The test to be applied is, "would they be vested if they were legal limitations of realty?" Therefore all *future* equitable interests either in real or personal property, which, if they were legal interests in realty, would be reversions and vested remainders, are, for the purpose of the rule against perpetuities, to

---

<sup>1</sup> Gray on Perp. § 201.

<sup>2</sup> For the origin and history of the rule against perpetuities, see Gray on Perp. chap. v. and § 296. It is interesting to note that the decisions upon many of the cases cited in Chapter ii. of this treatise have been instrumental in developing the rule to its present shape.

<sup>3</sup> See Gray on Perp. §§ 90, 205, and Chap. iii. for the distinction between vested and contingent interests.

<sup>4</sup> See Gray on Perp. Chap. viii. for all the interests subject to the rule against perpetuities.

<sup>5</sup> Gray on Perp. § 116.

be considered vested interests. All other future equitable interests are not vested.<sup>1</sup>

§ 32. The contingency on which future interests are conditioned must happen, if at all, within the limits of the rule against perpetuities; if it can possibly happen beyond those limits, the interest is too remote. That limit is, the life of any one person, or the survivor out of any number of specified persons, *in esse* at the execution of the deed (if the trust be created by an instrument *inter vivos*), or the death of the testator (if created by a testamentary instrument), and for a further contingent period of nine months, followed by a term of twenty-one years.

§ 33. The number of lives, which might be selected as *cestui que vies*, was originally only one, but now the contingency upon which the future interest depends may be postponed for any number of lives, provided they are all *in esse* when the contingent interest is created. The settlor is, therefore, excluded from selecting lives not *in esse*. The *cestui que vies*, however, need have no interest in the estate, but they should be selected so that there should always be a reasonable probability of ascertaining when the survivor ceased to exist.<sup>2</sup>

§ 34. With respect to the period of nine months, or the period of gestation, Mr. Gray gives<sup>3</sup> the two following rules which he considers embody the correct doctrine upon this point. I. Every life is to be considered as beginning from the time of conception. II. A future interest, to begin when or before a person reaches twenty-one, is not too remote if such person must be begotten, though not born, within a life in being at the creation of the interest.

§ 35. It is now well settled that the term of twenty-one years may be taken in gross without reference to any infancy. At the time of the decision in *Thellusson v. Woodford*, however, the rule against perpetuities had not been extended so as to cover a gross term of twenty-one years. The point was settled by the decision in *Bengough v. Edridge*,<sup>4</sup> S. C. in Dom. Proc. Sub. nom. *Cadell v. Palmer*.<sup>5</sup> In that case a will had been framed with the express pur-

<sup>1</sup> Whether the equitable interest arising out of a resulting trust on a future contingency to the creator of a trust is subject to the rule against perpetuities, see Gray on Perp. § 327.

<sup>2</sup> *Goring v. Bickerstaffe*, Freem. Ch. 163, 166; *Love v. Wyndham*, 1 Mod. 50, 54; 1 Sid. 450, 451; but see *Luddington v. Kime*, 1 Ld. Raym. 203, 207; see also *Scattergood v. Edge*, 1 Salk. 229; *Hopkins v. Hopkins*, 1 Atk. 580, 596, ante, § 9; *Thellusson v. Woodford*, 4 Ves. 227; 11 Ves. 112, § 20, ante, *Low v. Burron*, 3 P. Wms. 262, 265; 2 Harg. Jurid. Arg. 135, note (w); *Humberston v. Humberston*, 1 P. Wms. 332; 2 Vern. 738; Prec. Ch. 455; Gilb. Eq. 128; Harg. Thel. Act § 18; *Cadell v. Palmer*, 1 Cl. & F. 372; 7 Bl. n. s. 202; 10 Bing. 140; *Pownall v. Graham*, 33 Beav. 242. Gray on Perp. §§ 216-219 and 189, 190. For the legislative changes which have been made in some of the United States on the number of lives, see § 43-45, 47, *post*.

<sup>3</sup> Gray on Perp. §§ 220-222.

<sup>4</sup> 1 Sim. 173.

<sup>5</sup> 1 Cl. & F. 372; 7 Bl. n. s. 202; 10 Bing. 140.

pose of carrying accumulation to the longest period allowable under the Thellusson act. The testator created a term of one hundred and twenty years, but determinable on the death of the survivor of twenty-eight persons *in esse* at his own decease, eleven of whom were unconnected with the persons beneficially entitled; and had added a further term of twenty years in gross, commencing at the determination of the former term. It was here contended that the term of twenty years, being in gross and not dependent on a minority, was an illegal limitation, on the ground of remoteness. This case was argued in the fullest manner before Sir John Leach, V. C., and on appeal to the House of Lords. The Vice Chancellor held,<sup>1</sup> in 1826, that the term of twenty-one years could be taken without reference to the minority of any one. In the House of Lords, in 1832, the decree was affirmed.<sup>2</sup>

§ 36. The time within which future interest can legally be created runs only from the testator's death and not from the date of his will, and the question of remoteness is to be determined from that date, when the trust is created by a testamentary instrument.<sup>3</sup>

§ 37. Such is the modern form of the rule against perpetuities, as it has been finally established in England. Throughout the United States, in the absence of statute, this form of the law limiting the time within which future interests can be created has always been adopted. Since, therefore, an accumulation of the surplus intermediate income arising out of either real or personal property, until the contingency, upon which the future interest is conditioned, happens, may be directed commensurate with the creation of the future interest in the corpus of the estate out of which such accumulations issue, the rule against perpetuities is at present, in the absence of statute, the law limiting the duration of all trusts for accumulation.<sup>4</sup>

§ 38. In some States the rule of the common law on the subject of the remoteness of future interests has been either reinforced or modified by constitutional or statutory provisions.

§ 39. In Georgia,<sup>5</sup> Iowa<sup>6</sup> and Kentucky,<sup>7</sup> statutes have been passed which seem to be simply declaratory of the common law.

§ 40. In other States the rule against perpetuities has been

<sup>1</sup> 1 Sim. 267.

<sup>2</sup> 1 Cl. & F. 411. See also *Barnitz v. Casey*, 7 Cr. 456, 469. *Pleasants v. Pleasants*, 2 Call. 319, 331, but see *Mayor of New York v. Stuyvesant*, 17 N. Y. 34. For a history of the extension of the rule against perpetuities beyond lives in being, see *Gray on Perp.* §§ 171-188.

<sup>3</sup> *Gray on Perp.* § 231, and cases there cited.

<sup>4</sup> "As there is no statute upon the subject in Massachusetts accumulations are here still governed by the rules of the common law." Per *Gray, J.* in *Odell v. Odell*, 10 Allen 4.

<sup>5</sup> Rev. Code, Art. 49, § 2.

<sup>6</sup> Code of 1884, § 1920.

<sup>7</sup> Gen. Sts. (1873) c. 68 Art. 1, § 27.

modified by statutory provisions which introduce rules of greater stringency than formerly.<sup>1</sup>

§ 41. *Connecticut*. "No estates in fee simple, fee tail, or any less estate, shall be given, by deed or will, to any persons but such as are, at the time of making such deed or will, in being, or to their immediate issue or descendants."<sup>2</sup>

§ 42. *Ohio*. "No estate in fee simple, fee tail, or any lesser estate, in lands or tenements, lying within this State, shall be given or granted by deed or will, to any person or persons but such as are in being, or to the immediate issue or descendants of such as are in being at the time of making such deed or will."<sup>3</sup>

§ 43. *Alabama*. "*Extent of time for which lands may be conveyed to certain persons; perpetuity forbid*. Lands may be conveyed to the wife and children, or children only, severally, successively, and jointly; and to the heirs of the body of the survivor, if they come of age, and in default thereof over, but conveyances to other than the wife and children, or children only, cannot extend beyond three lives in being at the date of the conveyance, and ten years thereafter."<sup>4</sup> "No leasehold estate can be created for a longer term than twenty years."<sup>5</sup>

§ 44. *Mississippi*. "Estates in fee tail are prohibited; and every estate, which shall be created an estate in fee tail, shall be an estate in fee simple; provided, that any person may make a conveyance, or a devise of lands, to a succession of donees then living, not exceeding two; and to the heirs of the body of the remainderman, and in default thereof, to the right heirs of the donor, in fee simple."<sup>6</sup>

§ 45. *New York*. By the Revised Statutes of 1828,<sup>7</sup> it is provided that the absolute power of alienation cannot be suspended, by any limitation or condition, for a longer period than the continuance of two lives in being at the creation of the estate, except that a contingent remainder in fee to take effect in the event that the persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined during their minority. Successive limitations of estates for life are not valid except to persons in being at the time of their creation. And if a remainder is

<sup>1</sup> On the whole subject of the legislative changes of the rule against perpetuities in the United States, see Gray on Perp. Appendix C, where the statutes, other than those affecting the question of accumulation, and the cases arising under them, are discussed.

<sup>2</sup> Gen. Sts. (1875) tit. 18, c. 6, pt. 1, § 3 p. 352; *Coit v. Comstock*, 51 Conn. 352.

<sup>3</sup> Rev. Sts. (1880), § 4200.

<sup>4</sup> Rev. Code of 1886, § 1834. The following section of the Code relates to accumulation. See § 213 *post*.

<sup>5</sup> Rev. Code of 1886, § 1836.

<sup>6</sup> Rev. Code of 1871, § 2286.

<sup>7</sup> Rev. Sts. pt. 2, c. 1 tit. 2, §§. 15, -20. See also §§. 14, 23, 24, 36. That part of the Revised Statutes relating to accumulation will be given later. See § 195 *et seq. post*.

limited on more than two successive estates for lives in being, all the subsequent successive estates are void; and, upon the death of those two persons the remainder will take effect as if no other life estate has been created. No remainder can be created for the life of a person other than the grantee or devisee of such estate, unless such remainder is in fee; nor can a remainder be created upon such an estate in a term of years, unless it is for the whole residue of the term. If more than two lives are named, the remainder takes effect upon the death of the two persons first named, in the same manner as if no other persons had been named or lives introduced. A contingent remainder cannot be limited on a term of years, unless the contingency on which it is limited is such that it must vest during the continuance of two lives in being at the creation of such remainder, or at the termination of such term of years.<sup>1</sup> The absolute ownership of personal property cannot be suspended, by any limitation, or condition for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than two lives in being at the death of the testator. In all other respects, limitations of future or contingent interests in personal property shall be subject to the rules relating to future estates in lands.<sup>2</sup>

§ 46. *Indiana.* "The absolute power of aliening lands shall not be suspended by any limitation or condition whatever, contained in any grant, conveyance, or devise, for a longer period than during the existence of a life, or any number of lives, in being at the creation of the estate conveyed, granted, devised, and therein specified, with the exception that a contingent remainder in fee may be created on a prior remainder in fee, to take effect, in the event that the person or persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such person or persons may be determined before they attain their full age."<sup>3</sup> "Where a remainder for life shall be limited on any other than a life or lives in being at the creation of such estate, and the life estates, subsequent to those persons entitled to take life estates, according to the provisions of the last preceding section shall be void; and upon the death of those persons entitled to take the remainder shall take effect in the same manner as if such void estates had not been created."<sup>4</sup> "*How long ownership may be suspended.*" No limitation or condition shall suspend the absolute ownership of personal property longer than till the termination of lives in being at the time of the execution of

<sup>1</sup> See Perry on Trusts, § 391.

<sup>2</sup> Rev. Sts. pt. 2 c. 4 tit. 4, §§ 1, 2. For a collection of the cases that have arisen under this statute, see Gray on Perp. § 750.

<sup>3</sup> Rev. Sts. (1881) § 2962. Rev. Sts. (1876) c. 82, § 40.

<sup>4</sup> Rev. Sts. (1881) § 2963. Rev. Sts. (1876) c. 82, § 41.

the instrument containing such limitation or condition, or, if in a will, of lives in being at the death of the testator.”<sup>1</sup>

§ 47. In Michigan, Wisconsin and Minnesota statutes have been passed<sup>2</sup> which relate to the subject of the remoteness of interests in land, and the provisions of these statutes are substantially the same as the provisions of the New York statutes on the same subject. These States, however, have not passed any statutes upon the subject of the remoteness of interests in personal property.

§ 48. In California statutes have been passed<sup>3</sup> which relate to the subject of the remoteness of interests in both real and personal property, and which seem to be taken from the New York statutes. In California, however, the absolute power of alienation can be suspended during the lives of any number of persons in being, and is not limited, as in New York, to two existing lives.

§ 49. In England<sup>4</sup> and Pennsylvania,<sup>5</sup> the statutory modifications of the rule against perpetuities relate only to the subject of accumulation.

§ 50. In all the other States, except perhaps in Louisiana, where the rules of property were derived from the Roman Law or the Code Civil of France, the rules of the common law on the subject of the remoteness of future interests prevail and are in force.

<sup>1</sup> Rev. Sts. (1881) § 6057. The following sections relate to the subject of accumulation, they are referred to later. See § 211 *post*.

<sup>2</sup> 2 Mich. Comp. Laws (1871) c. 147, §§ 14-21, 23, 24, 36; 2 Wis. Rev. Sts. (1858) c. 83, §§ 14-21, 23, 24, 36; Minn. Gen. Sts. (1886) c. 45, §§ 14-21, 23, 24, 36. The following sections of each of these statutes relates to the subject of the accumulation of rents and profits from land. See § 210, *post*.

<sup>3</sup> Civil Code, §§ 715-718, 770-777, 722. §§ 723-726 relate to Accumulation. See § 212, *post*.

<sup>4</sup> *Theellusson Act*, 39 & 40 Geo. III. c. 98.

<sup>5</sup> *St. of April 18th, 1853*, § 9, 2 *Bright. Purd. Dig.* (1885) 1460, pl. 9.

## CHAPTER IV.

### ACCUMULATION AT COMMON LAW.

#### 1. *Trusts for Accumulation too Remote.*

§ 51. A trust for accumulation must be confined within the limits established by the rule against perpetuities, if it may possibly go beyond these limits it is entirely void *ab initio*. If the arrival, of the period fixed for, or needed for, the determination of a trust for accumulation is a condition precedent to the gift of the accumulated fund and if this period may possibly fall beyond the limits of the rule against perpetuities, then the gift of the accumulated fund is void and the provision for accumulation is bad altogether. The Courts cannot cut the trust down to the legitimate extent by substituting a shorter time or a speedier event than the settlor or testator directs.<sup>1</sup> And the persons entitled to the property and the income which the law releases from accumulation, are those who would have been entitled to them had the direction to accumulate and the gift of the accumulated fund both been omitted from the will. In this case the gift is made subject to the illegal direction to accumulate and in fact out of the accumulated fund itself; the direction to accumulate cannot be separated from the gift, without destroying the substantial form of the gift itself, consequently, since the form of the gift is of the substance of it, the gift itself fails along with the void trust for accumulation.

#### 2. *Trusts for accumulation in connection with estates in fee simple and absolute interest in property.*

§ 52. "The rule against perpetuities," says Mr. Gray,<sup>2</sup> "is not a rule of construction, but a peremptory command of law. It is not, like a rule of construction, a test, more or less artificial, to determine intention. Its object is to defeat intention. Therefore every provision in a will or settlement is to be construed as if the

<sup>1</sup> *Southampton v. Hertford*, 2 V. & B. 54; *Marshall v. Holloway*, 2 Swanst. 432; *Palmer v. Holford*, 4 Russ. 403; *Vawdry v. Geddes*, 1 Russ. & M. 203; *Curtis v. Lukin*, 5 Beav. 147; *Boughton v. James*, 1 Coll. 26, 45; *sub. nom.* *Boughton v. Boughton*, 1 H. L. Ca. 406; *Scarisbrick v. Skelmersdale*, 17 Sim. 187; *Turvin v. Newcome*, 3 K. & J. 16; *Thorndike v. Loring*, 15 Gray, 391; *Smith v. Cunninghame*, 13 L. R. Ir. 480; *Armory v. Lord*, 5 Selden, 403; *Lewis' Perp.* 593-596; *Suppl.* 183, *et seq.*; *Harg. Thel. Act*, § 74; *Gray on Perp.* §§ 671, 674; 3 *Dav. Conv.* (3rd ed.) 465, note. See *Cross v. Glennie*, 3 Y. & C. C. C. 237, 243; *Lewis' Perp. Suppl.* 190; *Perry on Trusts*, § 396.

<sup>2</sup> *Gray on Perp.* § 629.

rule did not exist, and then to the provision so construed the rule is to be remorselessly applied."

§ 53. As a general rule neither the common law nor equity, either in England or throughout the United States, allows restraints against the alienation of property, except in the well known case of property settled or devised to the sole and separate use of married women.

§ 54. Any restraint against alienation attached to estates in fee simple or vested indefeasible interests in chattels real or personal, whether legal or equitable is void. Restraints against alienation, however, may be attached to the separate estates of married women. When, therefore, a person has the fee simple of an estate or an absolute interest in chattels real or personal, whether legal or equitable, and no other person has in any event any interest, present or future, either in the principal or income, he can sell it, mortgage it, and subject it to his debts, and any provision postponing the transfer or payment of it to him is contrary to the policy of the law and, therefore, void and he is entitled to a conveyance at once.<sup>1</sup> This law prevails in England and throughout the United States generally, except possibly in Massachusetts.<sup>2</sup>

§ 55. So when a provision is attached to an absolute gift of property postponing its transfer or payment to him, who is absolutely entitled to the full and free enjoyment of it, until a certain period, and at the same time an accumulation is directed to take place until the gift becomes enjoyable, then, since the donee of the accumulated fund has a vested indefeasible right to the possession of the corpus of the gift out of which the accumulations are directed to issue, and is entitled absolutely to the accumulations themselves as they arise, the direction to accumulate is an illegal restraint on alienation, and the donee can stop the accumulation at any time and call for a distribution of the fund. Consequently such directions to accumulate, as they are destructible at any time, are neither obnoxious to the rule against perpetuities nor to the statutory rules against accumulation. And the bequest of the absolute gift of the property will be good, although the donee should

<sup>1</sup> *Piercy v. Roberts*, 1 Myl. & K. 4; *In re Landon's Trusts*, 40 L. J. Ch. 370; *Rocke v. Rocke*, 9 Beav. 66; *Swaffield v. Orton*, 1 De G. & Sm. 326; *Re Young's Settlement*, 18 Beav. 199; *Magrath v. Morehead*, L. R. 12 Eq. 491; *Re Jacob's Will*, 29 Beav. 402; *Pearson v. Dolman*, L. R. 3 Eq. 315; *Coventry v. Coventry*, 2 Dr. & Sm. 470; *Lane v. Lane*, 8 Allen, 350; *Sears v. Putnam*, 102 Mass. 5, 9; *Blackstone Bank v. Davis*, 21 Pick. 42; *Mandlebaum v. McDonell*, 29 Mich. 78; *Turley v. Massengill*, 7 Lea. 353; *Dorland v. Dorland*, 2 Barb. 63, 81; *Sanford v. Lackland*, 2 Dill 6; *Sparhawk v. Cloon*, 125 Mass. 263; *Mebane v. Mebat*, 4 Ired. Eq. 131; *Havens v. Healy*, 15 Barb. 296; *Samuel v. Ellis*, 12 B. Monr. 479; *Taylor v. Harwell*, 65 Ala. 1; *Smith v. Moore*, 37 Ala. 327; *Flournoy v. Johnson*, 7 B. Monr. 693; *Davidson v. Kemper*, 79 Ky. 5. Even Pennsylvania prohibits inalienable equitable fees. *Keyser's Appeal*, 57 Pa. St. 236; see *Talbot v. Jevors*, L. R. 20 Eq. 255; *Weatherall v. Thornburgh*, 8 Ch. D. 261, but see *Peard v. Kekewich*, 15 Beav. 166, and *Rhoads v. Rhoads*, 43 Ill. 239, but see also *Braman v. Stiles*, 2 Pick. 460, and *Russell v. Grinnell*, 105 Mass. 425, and *Broadway Bank v. Adams*, 133 Mass. 170. Gray on Restraints on Alienation, §§ 105-124.

<sup>2</sup> See cases cited at end of note to last section.



allow the accumulations to go on as directed and the direction should be for an illegal or too remote period, for the accumulations may be stopped within the legal period, and the law concerns itself with the possibilities of an illegal direction to accumulate, and not with the fact whether the donee allows the accumulation to go on in accordance with the void direction.<sup>1</sup>

§ 56. Thus, when absolute gifts or legacies are directed not to be fully enjoyed until some years after the donee or legatee shall have attained his majority, and accumulation is directed until the gift or legacy becomes enjoyable, then, if the gift or legacy can be held to vest or be payable when the donee or legatee attains majority, the fund with its accumulations will be ordered to be transferred at that age; the subsequent accumulations failing and becoming void.<sup>2</sup> In *Gosling v. Gosling*, Sir W. P. Wood, V. C., said:<sup>3</sup> "The principle of this Court has always been to recognize the right of all persons who attain the age of twenty-one to enter upon the absolute use and enjoyment of the property given to them by a will, notwithstanding any directions by the testator to the effect that they are not to enjoy it until a later age; unless, during the interval, the property is given for the benefit of another. If the property is once theirs, it is useless for the testator to attempt to impose any fetter upon their enjoyment of it in full, so soon as they attain twenty-one. And upon that principle, unless there is in the will, or in some codicil to it, a clear indication of an intention on the part of the testator, not only that his devisees are not to have the enjoyment of the property he has devised to them until they attain twenty-five, but that some other person is to have that enjoyment, or unless the property is so clearly taken away from the devisees up to the time of their attaining twenty-five as to induce the Court to hold that, as to the previous rents and profits, there has been an intestacy, the Court does not hesitate to strike out of the will any direction that the devisees shall not enjoy it in full until they attain the age of twenty-five years."

§ 57. When property is given to trustees in trust with a discretion as to time, mode or amounts, in which a trust fund is to be applied for the *cestui que trust*, and no other person has, upon any event, any interest either in the principal or income of the fund, the

<sup>1</sup> *Saunders v. Vautier*, 4 Beav. 115, Cr. & Ph. 240; *Tregonell v. Sydenham*, 3 Dow. 194; *Conner v. Ogle*, 4 Md. Ch. 443; *Oddie v. Brown*, 4 De G. & J. 179; *Bateman v. Hetchkin*, 10 Beav. 426; *Phipps v. Kelynge*, 2 V. & B. 57 note (b), § 17, *ante*. *Bacon v. Proctor*, T. & R. 31; *Briggs v. Oxford*, 1 De G. M. & G. 363; *Williams v. Lewis*, 6 H. L. Ca. 1013; *Rocke v. Rocke*, 9 Beav. 66; *Magrath v. Morehead*, L. R. 12 Eq. 491, *Lewis on Perp.* 640; *Perry on Trusts*, 381; and *Thorndike v. Loring*, 15 Gray, 391, and *Fosdick v. Fosdick*, 6 Allen, 41, discussed in Gray on *Perp.* § 242.

<sup>2</sup> *Josselyn v. Josselyn*, 9 Sim. 63; *Saunders v. Vautier*, 4 Beav. 115, Cr. & Ph. 240; *Gosling v. Gosling*, H. R. V. Johns. 265. See also *Curtis v. Lukin*, 5 Beav. 147; *Hilton v. Hilton*, L. R. 14 Eq. 468; *Coventry v. Coventry*, 2 Dr. & Sm. 470.

<sup>3</sup> H. R. V. Johns. 272.

discretion is to be disregarded after the *cestui que trust* reaches twenty-one, at which time he is entitled to a conveyance of it and it can be taken for his debts. Here the trustees may have a discretion either to apply so much of the income of the fund as they in their judgment think best or to add the income to the principal.<sup>1</sup>

### 3. *Trusts for accumulation in connection with estates in fee tail.*

§ 58. Any provision restraining the alienation of an estate tail, except that devised or settled to the sole and separate use of married women, can be destroyed by the barring of the estate tail by a common recovery.

§ 59. Limitations subsequent to an estate tail, which must take effect during the existence of the estate tail or at the moment of its determination, or not at all, can be destroyed by the barring of the estate tail by a common recovery,<sup>2</sup> consequently such limitations, being destructible at any time by the tenant in tail, do not tend to restrain the free enjoyment and disposition of property and cannot be obnoxious to the objection of remoteness.<sup>3</sup>

§ 60. So a direction to accumulate concurrent and in connection with an estate tail cannot be void for remoteness if the tenant in tail has a vested indefeasible interest and can stop the accumulation at any time by the barring of the estate tail.

§ 61. But interests precedent to an estate tail are not barrable and, being indestructible, may be obnoxious to the objection of remoteness and therefore void.<sup>4</sup>

§ 62. So where a term precedent to estates tail is limited to trustees, upon trusts for the accumulation of rents during the minorities of successive tenants in tail, the trusts are void for remoteness, even though such tenants in tail have a vested interest in the accumulations.<sup>5</sup>

<sup>1</sup> *Piercy v. Roberts*, 1 Myl. & K. 4; *Mebane v. Mebane*, 4 Ired. Eq. 131; *Daniels v. Eldridge*, 125 Mass. 356; *Havens v. Healy*, 15 Barb. 296; *Hilton v. Hilton*, L. R. 14 Eq. 468; see also *Kyser's Appeal*, 57 Pa. St. 236, for Pennsylvania law, but see *Russell v. Grinnell*, 105 Mass. 425; *Braman v. Stiles*, 2 Pick. 460 and *Broadway Bank v. Adams*, 133 Mass. 170.

<sup>2</sup> *Theobald on Wills*, 432 (2nd ed.).

<sup>3</sup> *Cole v. Sewell*, 4 Dr. & War. 1; 2 H. L. 186; *Doe d. Winter v. Perratt*, 9 Cl. & F. 606; *Heasman v. Pearse*, 7 Ch. 275; see also *Theobald on Wills*, 431; *Gray on Perp.*, §§ 443-449.

<sup>4</sup> *Case v. Drosier*, 2 Kee. 764; 5 M. & Cr. 246; *Sykes v. Sykes*, 13 Eq. 56; see this latter case justly criticised in *Gray on Perp.* §§ 469, 470.

<sup>5</sup> *Southampton v. Hertford*, 2 V. & B. 54; *Marshall v. Holloway*, 2 Swanst. 432; *Scarisbrick v. Skelmersdale*, 17 Sim. 187; *Lade v. Holford*, 1 W. Bl. 428; *Amb. 479*; 3 Burr. 1416, ante, § 16; *Cross v. Glennie*, 2 Y. & C. C. C. 237; *Browne v. Stoughton*, 14 Sim. 369; *Turvin v. Newcome*, 3 K. & J. 16; *Floyer v. Banks*, L. R. 8 Eq. 115; *Cochrane v. Cochrane*, 11 L. R. Ir. 361; see *Lewis' Perp. Suppl.* 183, *et seq.*; *Marsden Perp.*, 155, *et seq.*; 1 Jarm. on Wills (4th ed.), 274; *Theobald on Wills*, 432; *Gray on Perp.*, §§ 462-468.

#### 4. *Trusts for Accumulation in connection with estates for life.*

§ 63. Any provision restraining the alienation voluntary or involuntary of a life estate or interest, in either real or personal property, whether legal or equitable, except that devised or settled to the sole and separate use of married women, is void.<sup>1</sup> A condition or conditional limitation on alienation, however, attached to a life estate or interest in either real or personal property is good.<sup>2</sup>

§ 64. So a direction to accumulate concurrent and in connection with a life estate or interest, can be stopped at any time by the life tenant if he is the person to whom the accumulated fund is to be paid, and has a vested indefeasible interest in the accumulations as they arise, or an absolute right for life to the possession of the property out of which such accumulations issue. Consequently such direction to accumulate, being destructible at any time by the life tenant, cannot be too remote.

§ 65. "But suppose" says Mr. Gray<sup>3</sup> "as is often done to save property from creditors, that it is given to A. and his heirs in trust to pay the income to B. for life, and on B.'s death to pay the income among B.'s (unborn) children as the trustee and his heirs may in his or their discretion think fit, or at his or their discretion to add the income to the principal. Here, in order to give any interest to any child, or in order that any sum should be added to the principal, the trustee must exercise his discretion to that end; the exercise of such discretion is a condition precedent, and as that discretion may not be exercised in that way till too remote a period, it would seem that the whole gift upon B.'s death is void. Even if there is no discretion too add the income to the principal, but only the discretion to distribute, the gift would seem too remote; for though the whole class have a vested right, yet the share of each member depends upon the prior exercise of discretion by the trustee. Perhaps such a gift to unborn children may be held good as a gift to them in equal shares, the discretion to modify the amount of the shares and to add any part of the income to the principal being rejected, somewhat as a restraint on alienation during coverture is rejected when attached to the gift of a life estate to an unborn child." "To apply the principle, however, the clause giving the trustees discretion must be separate from the gift."<sup>4</sup>

<sup>1</sup> In Pennsylvania and Massachusetts, however, restraints against alienation can be attached to equitable life interests, see § 120 *et. seq. post.* In the Federal Courts the dicta are conflicting. And in several of the States such restraints are more or less permitted by statute. See Gray on Restraints on Alienation, §§ 134-277 a.

<sup>2</sup> See Gray on Restraints on Alienation, §§ 78-100.

<sup>3</sup> Gray on Perp. § 246; see also Gray on Res. against Alienation, § 260.

<sup>4</sup> Gray on Perp. § 439. See also *Hilton v. Hilton*, L. R. 14 Eq. 468. Such discretionary powers to accumulate are subject to the statutory rules against accumulation just as they are subject to the rule against perpetuities.

5. *Vested interests in general.*

§ 66. And generally, although an accumulation may be directed, which may possibly extend beyond the limits allowed by the rule against perpetuities, yet, if the whole beneficial interest must, by the terms of the settlement, become vested and the beneficiaries themselves come into existence or be ascertained, if at all, and have a vested right to possession, within the limits allowed by the rule against perpetuities, the direction to accumulate cannot be too remote, for in this case the beneficiaries themselves may immediately upon the vesting, and, therefore, within the allowed limits, put an end to the accumulation.<sup>1</sup> And it has been held, especially in connection with charitable gifts, that when an illegal or void direction to accumulate is independently engrafted upon a gift otherwise good, the gift may be held good, if the direction to accumulate is separable from the gift and can be stricken out without destroying its substantial form, but the direction to accumulate is bad altogether.<sup>2</sup>

§ 67. A trust for the accumulation of income for the purpose of paying off debts or incumbrances upon the estate of the testator is not void for remoteness, although its duration be unlimited, for the creditors have an immediate present charge on the property, and can put an end to the accumulation at any time.<sup>3</sup> But a trust for accumulation for the purpose of paying off the debts of a stranger is subject to the rule against perpetuities and is valid only for the period allowed by that rule.<sup>4</sup>

§ 68. A direction to accumulate until a fund reaches a certain amount, and then to apply it for the benefit of certain named persons for their lives and the life of the survivor, although its duration may be unlimited, is, nevertheless, not void for uncertainty or remoteness, if the fund, whether it has reached the amount directed or not, is to be divided at the death of the survivor, for in this case, since the fund becomes vested within the limits of the rule against perpetuities, the accumulation may be stopped at any time and the fund disposed of. This point was decided in *Oddie v. Brown*,<sup>5</sup> where

<sup>1</sup> *Oddie v. Brown*, 4 De G. & J. 179; *Bateman v. Hotchkin*, 10 Beav. 426; *Bacon v. Proctor*, T. & R. 31; and see *Briggs v. Earl of Oxford*, 1 De G. M. & G. 363; *Williams v. Lewis*, 6 H. L. Cas. 1013. *Lewin on Trusts*, (8th ed.), 90; *Otis v. Coffin*, 7 Gray, 511.

<sup>2</sup> *Haxton v. Corse*, 2 Barb. Ch. 506; *Craig v. Craig*, 3 Barb. Ch. 76; *Martin v. Margham*, 14 Sim. 230; *Williams v. Williams*, 4 Selden, 525; *Phelps v. Pond*, 23 N. Y. 69; *Kilpatrick v. Johnson*, 15 N. Y. 322; *Hawley v. James*, 5 Paige. 318; *Perry on Trusts*, § 396; see §§ 74-78 *post*.

<sup>3</sup> *Southampton v. Hertford*, 2 V. & B. 54, 65; *Bacon v. Proctor*, T. & R. 31, 40; *Bateman v. Hotchkin*, 10 Beav. 426; *Tewart v. Lawson*, L. R. 18 Eq. 490. 1 Jarm. Wills (4th ed.), 275, 306; *Briggs v. Earl of Oxford*, 1 De G. M. & G. 363; but see *Scarisbrick v. Skelmersdale*, 17 Sim. 187; see also *Gray on Perp.* §§ 415, 417, 486.

<sup>4</sup> See 1 Jarm. on Wills (4th ed.), § 306.

<sup>5</sup> 4 De. G. & J. 179, reversing S. C. 28 L. J. Ch. 542, 4 Jur. N. S. 605. See 4 Jur. N. S. Pt. 2. 337.

Lord Justice Turner said, "The mischief against which the law as to remoteness is directed in this, that property is rendered inalienable by the suspension of the vesting; but if the interest be vested this mischief does not exist. Suppose that a fund was directed to be accumulated simply for the benefit of a particular individual until a certain amount was reached which might not be reached within the period allowed by law for the suspension of vesting, it surely could not be said that the disposition was void for remoteness, when the individual might, at any time, stop the accumulation and dispose of the fund; and if such a disposition would not be void on the ground of remoteness, I do not see how the disposition in this case can be held to be void upon that ground."

§ 69. So a direction to accumulate for a term of thirty years is not void for remoteness when the income to be accumulated is to pay a legacy to a person in being.<sup>1</sup>

§ 70. In *Curtis v. Lukin*<sup>2</sup> a testator bequeathed leaseholds in Church street, having sixty years to run, and as to which there was no obligation on the part of the lessor to renew, to A. for life, with remainder to the children she should leave, and in default to B. He bequeathed to trustees other leaseholds, upon trust to accumulate the rents, until the leases of the Church street property "should become nearly expired," and then to apply such part thereof as should be necessary in the renewal of the Church street property, for the benefit of the respective persons to whom he had before, by his will, given the same, and the residue, after answering the purpose aforesaid, he gave to his residuary legatees. It was held, that the trust for accumulation and renewal was void for remoteness and uncertainty because the respective interests and relative rights of the parties could not be ascertained until the time of renewal arrived. In this case the parties could at any time during the *interim* put an end to the accumulation and agree upon a distribution among themselves. But this could not affect the legal construction, for not only must a gift vest and the donee come into existence and be ascertained, if at all, and have a vested right to possession, within the limits allowed by the rule against perpetuities, but the interests of the respective parties in the property, must be capable of ascertainment within that period, otherwise the gift will be void for remoteness.<sup>3</sup>

§ 71. "It has long been an established rule for the guidance of the Court, that all estates are to be holden vested, except estates in the devise of which a condition precedent to the vesting is so clearly expressed that the Courts cannot treat them as vested without decid-

<sup>1</sup> *Williams v. Lewis*, 6 H. L. C. 1013. So an accumulation to pay future legacies was held good in *Godden v. Crowhurst*, 10 Sim. 642. In Illinois, in the absence of statutory rules against accumulation, a trust to accumulate income for fifteen years, and then divide, was held good. *Rhoads v. Rhoads*, 43 Ill. 239.

<sup>2</sup> 5 Beav. 147.

<sup>3</sup> See also *Phipps v. Kelynge*, 2 V. & B. 57 note, and *Southampton v. Hertford*, 2 V. & B. 54, 62, 63; *Gray on Perp.* §§ 268-278, 675.

ing in direct opposition to the terms of the will. To accomplish this, words of seeming condition are, if possible, held to have only the effect of postponing the right of possession; and if the devise be clearly conditional, the condition will, if possible be construed as a condition subsequent and not precedent, so as to confer an immediately vested estate, subject to be divested on the happening of the contingency."<sup>1</sup> The Courts, therefore, will not adopt a construction of a will or settlement which will offend against the rule against perpetuities or the statutory rules against accumulation unless the language employed requires such a construction, if in other respects these instruments can be sustained.<sup>2</sup>

§ 72. When a testator bequeaths his personal estate to trustees upon trust to be converted and laid out in the purchase of real property, and such property is directed to be settled under limitations which render it capable of immediate enjoyment, or when a testator devises his real estate to trustees, upon trust for sale and conversion, for the benefit of A. for life, with remainders over, but in both cases the period of conversion is left to the discretion of the trustees; and when to such dispositions is added an express or implied direction for accumulation until the conversion is complete; "In such cases" says Mr. Hargrave,<sup>3</sup> "the accumulation apparently might endure, and the beneficial enjoyment of the property be postponed according to the discretion of the trustees; accumulations of this class are not allowed to this indefinite period, but are restrained to a period sufficient for the due ascertainment of the property liable to the trust, for the discharge of all incumbrances upon it, and for its proper investment in the manner directed by the testator, and thenceforth, if the conversion be not complete, the rents, profits, and produce of the property become enjoyable, and accumulation thereof ceases."

§ 73. Consequently, in these cases the Courts have decided, in order to prevent the hardship that would fall upon the person having the vested indefeasible interest, if the conversion was deferred and the accumulation continued for a long period, either from unavoidable circumstances or from the dilatoriness of the trustees, that in no case shall accumulation continue for more than one year from the testator's death; although the testator may have expressly directed accumulation until the investment is complete.<sup>4</sup> But in

<sup>1</sup> Hawkin's Wills 237.

<sup>2</sup> Martelli v. Holloway, L. R. 5 H. L. 532; Oddie v. Brown, 4 De G. & J. 179, reversing S. C. 28 L. J. Ch. 542, 4 Jur. N. S. 605. See 4 Jur. N. S. pt. 2, 337; Thouron's estate, 11 W. N. C. 286, S. C. 18 W. N. C. 56.

<sup>3</sup> Harg. Thel. Act. § 123, p. 159.

<sup>4</sup> Sitwell v. Bernard, 6 Ves. 520; Entwistle v. Markland, Stuart v. Bruere, cited Ib. 528, 529; Griffith v. Morrison, cited 1 J. & W. 311; Tucker v. Boswell, 5 Beav. 607; Kilvington v. Gray, 2 S. & S. 396; Parry v. Warrington, 6 Mac. 155; Stair v. Macgill, 1 Bligh. N. S. 662; Noel v. Lord Henley, 7 Price, 251; Vickers v. Scott, 3 M. & K. 500; and see Vigor v. Harwood, 12 Sim. 172; Greisley v. Earl of Chesterfield, 13 Beav. 288; Beanland v. Halliwell, 1 C. P. Cooper, & Cottenham, 169, note (a).

some cases where there is no express direction to accumulate, the person having the vested indefeasible right to possession is even entitled to an interest in the first year's income.<sup>1</sup>

### 6. *Trusts for accumulation in connection with charitable gifts.*

§ 74. "If the gift in trust for charity," says Lord Selborne, C., in *Chamberlayne v. Brockett*,<sup>2</sup> "is itself conditional upon a future and uncertain event, it is subject, in our judgment, to the same rules and principles as any other estate depending for its coming into existence upon a condition precedent. If the condition is never fulfilled, the estate never arises; if it is so remote and indefinite as to transgress the limits of time prescribed by the rules of law against perpetuities, the gift fails *ab initio*."<sup>3</sup> We agree with what was said by the Master of the Rolls in *Cherry v. Mott*,<sup>4</sup> that 'there may no doubt be a conditional legacy to a charity as well as for any other purpose.' Consequently a trust for accumulation in connection with a contingent gift to a charity is void if the gift of the accumulated fund is too remote.

§ 75. The tendency of the Court, however, is to construe all gifts to charities as unconditional and immediate and not subject to a condition precedent unless the language of the donor absolutely requires such a construction. Such unconditional gifts, therefore, being immediate cannot be obnoxious to the objection of remoteness; for if the particular manner of carrying out the charity indicated by the donor is too remote, it will be carried out *cy pres*.<sup>5</sup> Consequently a direction to accumulate in connection with such gifts, if too remote, would seem to be destructible at any time and the income immediately distributable in charity; the heirs or next of kin are not let in.<sup>6</sup>

<sup>1</sup> *Stott v. Hollingworth*, 3 Mad. 161; *Taylor v. Hibbert*, 1 J. & W. 308; *Angerstein v. Martin*, T. & R. 238; *Hewitt v. Morris*, T. & R. 244; *Macpherson v. Macpherson*, 16 Jur. 847; *Lewin on Trusts*, 301, 302.

<sup>2</sup> L. R. 8 Ch. 206, 211.

<sup>3</sup> *Cherry v. Mott*, 1 Myl. & Cr. 123, 131, 132; *A. G. v. Goulding*, 2 Bro. C. C. 428; *A. G. v. Bishop of Oxford*, cited 4 Ves. 431 *et seq.*; *A. G. v. Whitechurch*, 3 Ves. Jr. 141; *Corbyn v. French*, 4 Ves. 418; *Clark v. Taylor*, 1 Drew 642; *Carbery v. Cox*, 3 Ir. Ch. 231; *Sims v. Quinlan*, 16 Ir. Ch. 191; 17 Ir. Ch. 43; *De Themmines v. Bonneval*, 5 Russ. 288; *Jocelyn v. Nott*, 44 Conn. 55; *A. G. v. Jolly*, 2 Strob. Eq. 379; 1 Jarm. Wills (4th ed.) 245 *et seq.*; *Tud. L. C. in Real Prop.* (3rd ed.) 580, 581; *Gray on Perp.* §§ 605-607.

<sup>4</sup> 1 Myl. & Cr. 132.

<sup>5</sup> *Gray on Perp.*, §§ 607, 678.

<sup>6</sup> *Martin v. Margham*, 14 Sim. 230; *Odell v. Odell*, 10 Allen, 1; *Philadelphia v. Girard*, 45 Pa. St. 9; *Curran v. Philadelphia Trust Co.*, 15 Phila. 84; *A. G. v. Poulson*, 3 Hare, 555; *American Academy v. Harvard College*, 12 Gray, 582; *Tainter v. Clark*, 5 Allen, 66; *Williams v. Williams*, 8 N. Y. 525, 538; *Levy v. Levy*, 40 Barb. 585; 33 N. Y. 97; *A. G. v. Butler*, 123 Mass. 304; *Wilson v. Lynt*, 30 Barb. 124; *Parkhurst v. Roy*, 7 Ont. Ap. 614; *Ogilvie v. Kirk Session of Dundee*, 8 D. 1229; *Maxwell v. Maxwell*, 5 R. 248; *Ewen v. Bannerman*, 2 Dow. & Cl. 474; *sub nom. Ewen v. Magistrates of Montrose*, 4 Wils. & Sh. 346;

§ 76. When there are statutory rules against accumulation, trusts for accumulation in connection with charitable gifts will be governed by the rules of the statutes, unless they are specially excepted.<sup>1</sup>

§ 77. The principle, that, when there is an indefeasible gift to a legatee, a direction to accumulate the income thereof is a restraint against alienation and void and the legatee can stop the accumulations at any time,<sup>2</sup> has been held not to apply where the legatees are charities.<sup>3</sup> In *Harbin v. Masterman*,<sup>4</sup> there were immediate gifts to charities and a direction to accumulate the income thereof for a certain period. It was held that the charities were not entitled to have the accumulations stopped, and to be paid at once, but that the accumulations must go on till further ordered. And again in *Biddle's Appeal*<sup>5</sup> a testator devised and bequeathed all his estate to his executors in trust to permit one A. to occupy certain premises during her lifetime, and as to all the rest of the estate to let the realty and invest the personalty. He directed that out of the income of his said estate the insurance and taxes on the premises occupied by A. should be paid, and also divers annuities. After the death of A., and of the annuitants, he directed his executors to convey and transfer his whole estate with the accumulations to a charity. It was held that no part of the estate or accumulations should be conveyed or transferred to the charity until the death of A. and of the annuitants, and that accumulation could continue in the meantime.

§ 78. If it is the intention of the Courts, therefore, to respect the postponement of the use and enjoyment of vested gifts to charities when similar directions are declared invalid where the legatees are individuals, (and there seems to be some ground for allowing the exception) then all provisions for the accumulation of the income of immediate gifts to charities, since they cannot be stopped at any time, are subject to the rule against perpetuities and also to the statutory rules against accumulation unless especially excepted.

*Hillyard v. Miller*, 10 Pa. St. 326; 1 *Jarman Wills* (4th ed.), 251; *American Note* 13; *Gray on Perp.*, § 678; and see *McDonough v. Murdock*, 15 Howard, 415; *Potter v. Thornton*, 7 R. I. 252; *Bispham's Equity*, § 133; *Perry on Trusts*, p. 502.

<sup>1</sup> *Martin v. Margham*, 14 Sim. 239; *Matter of Starr*, 2 Dem. 141; *Kilpatrick v. Johnson*, 15 N. Y. 322; *Perry on Trusts*, § 738. In New York trusts for charities are subject to the same rules against perpetuities as the ordinary trusts. *Levy v. Levy*, 33 N. Y. 97; *Wilson v. Lynt*, 30 Barb. 124; 6 How. 348; *Bascomb v. Albertson*, 34 N. Y. 504; *Wetmore v. Parker*, 7 Lansing, 121; *Rose v. Rose*, 4 Abb. Ct. of Appeal, 108; see also § 209, *post*.

<sup>2</sup> See § 52, *et seq.*, *ante*.

<sup>3</sup> *Harbin v. Masterman*, L. R. 12 Eq. 559; *Biddle's Appeal*, 12 W. N. C. 231, reversing S. C. *sub nom.* *Derbyshire's Estate*, 11 W. N. C. 22.

<sup>4</sup> L. R. 12 Eq. 559.

<sup>5</sup> 12 W. N. C. 231.



7. *Trusts for accumulation by force of law during minorities and lunacies.*

§ 79. In all cases where infants become entitled to the beneficial ownership of property, the rents and profits of the property to which the infant, if of full age, would have been entitled, except necessary allowances for maintenance, &c., are by the law itself removed from enjoyment and circulation and accumulated either in the hands of the guardian or trustee, or in the Court until the infant attains the age of twenty-one years, either for the benefit of the infant himself or of his representatives.<sup>1</sup> But every carefully drawn trust instrument contains an express direction to accumulate the income of an infant's trust fund, which may not be required for maintenance; but in the absence of such a positive direction, it will be equally the duty of the trustees to make this accumulation.

§ 80. In cases also of the lunacy of the person beneficially entitled under the limitations of a will or settlement, the Court is accustomed to direct an accumulation of the surplus income of the lunatic's property until his death or his becoming *sui juris*.<sup>2</sup>

8. *Maintenance out of accumulations during minorities.*

§ 81. Accumulation is frequently directed during the minority of a devisee or legatee. An express direction, however, to accumulate during minorities does not necessarily prevent the estate or interest from being vested, and, therefore, the infant who is the person to whom the accumulations are to be paid has a vested indefeasible interest in the accumulations as they arise, and he can stop the accumulation when he attains twenty one years of age. Therefore, if nothing is said about maintenance in the meantime, in a proper case, the Court usually allows and directs maintenance during infancy, where the consent of the person to whom the property is given over has been obtained.<sup>3</sup> So maintenance is forthwith allowed in the case of a devise or legacy to a class of infants, with benefit of survivorship, when there is no devise or bequest over, and the chances of arriving at the age of twenty-one are equal, among all the devisees or legatees.<sup>4</sup>

<sup>1</sup> For case of accumulation of income of infants during minority under the English Conveyancing and Law of Property Act, 1881. §§ 42, 43, see Lewin on Trusts, pp. 579, 582, 584, 585.

<sup>2</sup> Harg. Thel. Act. § 108.

<sup>3</sup> *Stretch v. Watkins*, 1 Mad. 253; *Cavendish v. Mercer*, 5 Ves. 194, note; *Fendall v. Nash*, 5 Ves. 197; *Errington v. Chapman*, 12 Ves. 20; *Mole v. Mole*, 1 Dick. 310; *Lomax v. Lomax*, 11 Ves. 48. In *Kime v. Wellfitt*, 3 Sim. 533, the order for maintenance was refused where a residue had been bequeathed upon trust to accumulate for the testator's infant children at twenty-one, although the legatees over consented to the application.

<sup>4</sup> *Greenwell v. Greenwell*, 5 Ves. 194; *Fairman v. Green*, 10 Ves. 45; *Ex parte Kebble*, 11 Ves. 604; *Errat v. Barlow*, 14 Ves. 202; *Turner v. Turner*, 4 Sim. 430; *Cannings v. Flowers*, 7 Sim. 523.

§ 82. In *Errat v. Barlow*<sup>1</sup> Lord Eldon says: "that, (in gifts to a class of legatees,) if the chance of surviving be equal among all, and no other interest that upon any contingency would take effect, will be defeated, maintenance will be allowed out of the interest; but it is impossible to give it, where in any event under the operation and construction of the will or other settlement, that interest may possibly belong to other persons."<sup>2</sup>

§ 83. In *Evans v. Massey*<sup>3</sup> a fund, bequeathed by will, was directed to accumulate until two infants should attain the age of twenty-one, deducting annually from the interest such portion as might be necessary for their education and other expenses, with benefit of survivorship, in case of either dying under twenty-one; the shares to be vested at majority. The Court (with the consent of the parties to whom the fund was given over) directed an advancement for the purchase of a commission for one of the infants, but with considerable hesitation.

§ 84. In *Havelock v. Havelock*<sup>4</sup> a testator left property to the value of £10,000 a year to be accumulated for twenty-one years, and directed the accumulations to be laid out in the purchase of land, to be then held in trust for A. for life, and afterwards for his eldest son for life and his first and other sons in tail, with a similar trust for A.'s second son and his issue, with subsequent limitations over. Malins, V.C., held that as A. was possessed of a moderate income only, which was insufficient for the maintenance and education of his sons, to fit them for their prospective positions in life, a sum of £2,700 per annum should be allowed him for the benefit of the infants, with liberty to apply for an increased allowance if necessary when the children grew older. But it has been held, and very justly, that when there is an imperative trust to accumulate, it is the duty of the Court to carry out the testator's intention, and that the Court has no discretion to allow maintenance out of the income.<sup>5</sup>

<sup>1</sup> 14 Ves. 202.

<sup>2</sup> See also *Marshall v. Holloway*, 2 Swanst. 432; *Haley v. Bannister*, 4 Mad. 275; *Josselyn v. Josselyn*, 9 Sim. 63; and *Saunders v. Vautier*, 1 Cr. & Ph. 240, on the general subject of orders of maintenance in cases of accumulations.

<sup>3</sup> 1 You & Jerv. Exch. Rep. 196.

<sup>4</sup> 17 Ch. D. 807; and see *Bennett v. Wyndham*, 23 Beav. 521; and S. C. 4 De G. F. & J. 259.

<sup>5</sup> *Kemmis v. Kemmis*, 13 L. R. Ir. 372, following *Shaw v. McMahon*, 8 Ir. Eq. R. 584. For form of order of maintenance and the manner of framing them see *Re Colgan*, 19 Ch. D. 305; *Lewin on Trusts*, 587. For cases where the power of making allowances for maintenance continues after the period for accumulation limited by the Thellusson Act has expired see § 192, *post*.

## CHAPTER V.

### THE ENGLISH AND PENNSYLVANIA STATUTES.

#### 1. *The English and Pennsylvania Statutes.*

§ 85. At the beginning of the nineteenth century the rule against perpetuities formed the sole boundary to the duration of all trusts for accumulation. What an opportunity for a Thellusson to indulge his remorseless ambition by tying up his estate for accumulation for a century or more, not only at the expense of his offspring, who are left to starve, but also to the detriment of the community at large, in order that he might make a single devisee immensely rich at the expiration of the trust. In England a Thellusson did appear and the mischiefs and inconvenience of allowing so wide a range of accumulation as the common law permitted were soon brought to light by his endeavors. These mischiefs, says Hargrave,<sup>1</sup> were embodied in the abuse of testamentary power, in the abuse of the executory devise, and in the abuse of "the noble, rational and uniform system of the modern trust," for purposes dangerous to the public interest, as they were cruel and unnatural towards the family of the settlor, and for purposes sacrificing public welfare, private duties and private affections, at the shrine of ambition and vanity.

§ 86. But these mischiefs soon found a remedy, for however unsound and unconvincing the arguments employed against Mr. Thellusson's will were in point of law, in a political view they appear to have been soon adopted; for no sooner had the controversy over the will been concluded and the decision rendered, when Parliament, by the earnest endeavors of Lord Loughborough, who introduced the bill into the House of Lords on the twenty-fifth of July, 1800, passed the statute of 39 & 40 Geo. III. c. 98, entitled "An Act to restrain all trusts and directions in deeds or wills, whereby the profits and produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed, beyond the time therein limited." This Act, although sometimes called Lord Loughborough's Act,<sup>2</sup> is commonly known as the Thellusson Act and by its operation and application many of the evils of the common law have been removed. This Act is given in full in a note.<sup>3</sup>

<sup>1</sup> Harg. Jurid. Arg.

<sup>2</sup> See *Edwards v. Tuck*, 3 De G. M. & G. 40, 55.

<sup>3</sup> "An Act to restrain all Trusts and Directions in Deeds or Wills, whereby the Profits or Produce of Real or Personal Estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the Time therein limited. (28th July, 1800).

§ 87. In Pennsylvania the provisions of the Thellusson Act have formed the basis for that part of the act of 1853, which relates to accumulation. On the 4th of May, 1852, the Legislature of Pennsylvania passed a resolution authorizing the Governor to appoint three commissioners to revise the laws of the State upon several subjects, including the selling of real estate by persons acting in a trust capacity. By the active efforts of the commissioners a bill was drawn up and submitted to the Legislature in January, 1853, and this body shortly afterwards passed the statute of 18th of April, 1853, commonly called the Price Act, out of respect for Mr. Eli K. Price, to whom, although not one of the commissioners, was committed the preparation of the bill relating to the sale of real estate. From the report of the Commissioners<sup>1</sup> we quote the following:

"Whereas it is expedient that all dispositions of real or personal estates whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in Parliament assembled, and by the authority of the same, That no person or persons shall, after the passing of this Act, by any deed or deeds, surrender or surrenders, will, codicil or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits or produce thereof shall be wholly or partially accumulated; for any longer term than the life or lives of any such grantor or grantors, settlor or settlers; or the term of twenty-one years from the death of any such grantor, settlor, devisor or testator; or during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mere* at the time of the death of such grantor, devisor or testator; or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will or other assurances directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues and profits, or the interest, dividends or annual produce so directed to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.

"II. Provided always, and be it enacted, That nothing in this Act contained shall extend to any provision for payment of debts of any grantor, settlor or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor or devisor, or any child or children of any person taking any interest under any such conveyance, settlement or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if this Act had not passed.

"III. Provided also, and be it enacted, That nothing in this Act contained shall extend to any disposition respecting heritable property within that part of Great Britain called Scotland.

"IV. Provided also, and be it enacted, That the restrictions in this Act contained shall take effect and be in force with respect to wills and testaments made and executed before the passing of this Act, in such cases only where the devisor or testator shall be living, and of sound and disposing mind, after the expiration of twelve calendar months from the passing of this Act."

<sup>1</sup> Price on Act relating to sale of real estate, pp. 57, 58.

"Yet our law is open to many of the evils of perpetuities, or the tying up estates for long periods, without the power of alienation, inasmuch as they may be put to accumulate the increase for a century, to make a single devisee immensely rich at the end of that time, and to leave all intermediate generations to starve; and so was the English law until towards the close of the reign of Geo. III.; but is now amended so as to be much more in conformity with our republican institutions than our law. As the law now stands here, an estate may be made to accumulate and double many times, so long as any number of designated persons, living at the death of the testator, shall live, and twenty-one years and about nine months thereafter; and such persons can easily be so selected, as with said additional years to tie up the estate for a century. We have, therefore, added the ninth section to the bill, being in substance the English Act of 39 & 40, Geo. III. c. 98, limiting the period of accumulation to the minorities of such minors as may be interested, and allowing them a living out of it, when without other means of subsistence. In this latter respect this bill goes beyond the English Act." This act is also given in full in a note.<sup>1</sup>

§ 88. The Thellusson Act, says Lord Chancellor Brougham, is "an Act, which has hardly ever been discussed in courts either of law or equity, without the judge having occasion to observe upon the inartificial, and in several respects ill defined language in which its provisions are expressed." And Lord Chancellor Cranworth, in the case of *Tench v. Cheese*,<sup>2</sup> says: "We have in this case to deal

<sup>1</sup> "No person or persons shall, after the passing of this act, by any deed, will or otherwise, settle or dispose of any real or personal property, so and in such manner that the rents, issues, interests or profits thereof shall be wholly or partially accumulated, for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or testator, and the term of twenty-one years from the death of any such grantor, settler or testator; that is to say, only after such decease during the minority or respective minorities, with allowance for the period of gestation of any person or persons who, under the uses or trusts of the deed, will or other assurance directing such accumulation, would, for the time being, if of full age, be entitled unto the rents, issues, interests and profits so directed to accumulate. And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, in so far as it shall exceed the limits of this act; and the rents, issues, interests and profits so directed to be accumulated, contrary to the provisions of this act, shall go to and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed: *Provided*, That any donation, bequest or devise for any literary, scientific, charitable or religious purpose, shall not come within the prohibition of this section; which shall take effect and be in force, as well in respect to wills heretofore made by persons yet living and of competent mind, as in respect to wills hereafter to be made: *And provided*, That notwithstanding any direction to accumulate rents, issues, interest and profits, for the benefit of any minor or minors, it shall be lawful for the proper court as aforesaid, on the application of the guardian, where there shall be no other means for maintenance or education, to decree an adequate allowance for such purpose, but in such manner as to make an equal distribution among those having equal rights or expectancies, whether, at the time being, minors or of lawful age." 2 Bright, *Purd. Dig.* (1885) 1460, pl. 9.

<sup>2</sup> 6 De G. M. & G. 453.

with one, perhaps, of the most ill-drawn Acts to be found in our statute book; and it is rather singular that it should be so, for it is well known that it was introduced in consequence of a very important will, under the sanction of the Lord Chancellor of that day, that it was much considered and underwent great discussion, every one concerned feeling the importance of the subject; it is, however, notwithstanding framed unfortunately in such very obscure language, that it has been found exceedingly difficult to apply it to the different cases which from time to time have arisen." "And again Judge Paxson, when comparing the Pennsylvania Statute with the Thellusson Act in Washington's Estate,<sup>1</sup> says: "Both acts, certainly, are very obscure, and leave us in very great doubt as to what was the exact intent of their respective authors. Keeping in view, however, the evil which they were intended to remedy, it is clear that they were both levelled at accumulation. But as to precisely what extent accumulation shall go, and under what particular circumstances they may be allowed, we are left somewhat to conjecture. The only true rule in construing such an act, seems to be, to give the words employed their usual and grammatical signification, and not to grope in the dark after the meaning of the framers of the law, who, either had no very clear ideas upon the subject themselves, or else had a singularly infelicitous mode of expressing their thoughts."

§ 89. This obscurity of the Thellusson Act is probably to be attributed to the haste with which the Act was drawn rather than to any want of legal ability and experience on the part of its framers. The bill was introduced into the House of Lords by Lord Loughborough at a time when the danger of having others follow the unnatural course pursued by Mr. Thellusson in his will, produced an urgent necessity for some immediate legislative interference. It was impossible to pass a statute which would have a retrospective effect and consequently the only way even to attempt to frustrate the plans of contemplative testators was to use all possible haste in remedying the evils of the law. Hence has arisen the obscurity and inaccuracy, the usual accompaniment, and attempted evasion and litigation, the usual consequences of hasty legislation.

§ 90. Both the Thellusson Act and the Pennsylvania Statute are restraining remedial statutes. All remedial statutes should be so construed that by their application and operation the mischief should be suppressed and the remedy advanced consistently with reasonable construction.<sup>2</sup> This is what is meant by the equitable construction of a statute. But the doctrine of equitable construction has been thought by many to extend to cases contrary to the letter of the Act if within its spirit;<sup>3</sup> yet, the rule as generally laid down in the books does not conform to this, but, on the con-

<sup>1</sup> 8 Phila. 182.

<sup>2</sup> Dwaris on Statutes, 632, 654; R. R. Co. v. Dunn, 52 Ill. 260.

<sup>3</sup> 7 Plow. 109, 3 Rep. 7.

trary declares that a remedial statute may be expounded by equity, *ultra* the strict letter, *sed non contra* the strict letter of the Act. And Judge Paxson, when speaking of the Pennsylvania Statute,<sup>1</sup> says, "this Act is in derogation of the common law right to dispose of property and must be construed strictly. Any interpretation of it not expressly authorized by its terms must be rejected. To enlarge its scope would be legislation, and this is beyond the power of the judiciary."

§ 91. It may, therefore, be more correct to say, that, the English and Pennsylvania Statutes against accumulation may receive an equitable construction, only, when we qualify the meaning of the rule of equitable construction to be, that when equity construes a statute, so as to embrace a case within the mischief sought to be remedied, though it be not necessarily within the letter of the Act, nothing more is meant than that the meaning of the Act shall be extended to reach mischiefs of the same nature, character or description. And that the true meaning of the statutes is to be gathered not only from the words of the statutes alone, but also from a consideration of the mischiefs intended to be remedied.<sup>2</sup>

## 2. *Trusts for accumulation de hors the Statutes.*

§ 92. Neither the English nor the Pennsylvania Statute against accumulation is a rule of construction, but like the rule against perpetuities, they are positive commands of law given for the purpose of defeating intention. A settlement or will is therefore to be construed as if these statutes did not exist, and then the statutes applied.<sup>3</sup>

§ 93. It is a general principle, applicable to all restraining acts, says Mr. Hargrave,<sup>4</sup> "that, by no construction whatever of any part of such acts, validity can be given to dispositions invalid *de hors* such acts."<sup>5</sup> That is, if a disposition in its nature within the scope of a restraining act be wholly or partially void *de hors* the act, it will remain void notwithstanding the act, or, in other words, a restraining act only applies to or affects any disposition in its nature within the scope of the act, so far as (construing the instrument by itself, and as if the act had not passed), the disposition would have been valid *de hors* the act."

§ 94. Consequently, neither the English nor the Pennsylvania Statutes can render valid a provision for accumulation which violates

<sup>1</sup> Washington's Estate, 8 Phila. 185.

<sup>2</sup> Regina v. Simpson, 10 Mod. 344; Copeland v. Gallant, 1 P. Wms. 314; Ryall v. Rowles, 1 Atk. 165, 182, S. C. 1 Ves. 348, 365, 371; Rex v. Briggs, 3 P. Wms. 419, 434; Rex v. Pierce, 3 M. & S. 62; Salkeld v. Johnson, 1 Hare, 196, 207.

<sup>3</sup> Gray on Perp. § 694.

<sup>4</sup> Harg. Thel. Act, § 74.

<sup>5</sup> Co. Litt. 44, Black. Com. 2, 321.

the rule against perpetuities ; such provision is bad altogether. Neither can these statutes, by means of their exceptions and provisos render valid any provision for accumulation which is invalid *dehors* the statute.<sup>1</sup>

3. *Division of the subject of the consideration of the Statutes.*

§ 95. It will be found convenient to adopt the following heads under which to consider the construction, application and operation of the various clauses and provisions of the English and the Pennsylvania Statutes against accumulation.

I. Trusts and directions subject to the Statutes.

II. Statutory limits for accumulation.

III. Transgressive trusts for accumulation.

IV. Provisos of the Statutes.

---

<sup>1</sup> Marshall *v.* Holloway, 2 Swanst. 432; Curtis *v.* Lukin, 5 Beav. 147; Browne *v.* Stoughton, 14 Sim. 369; Boughton *v.* James, 1 Coll. 26, 45, *sub. nom.*; Boughton *v.* Boughton, 1 H. L. C. 406; Scarisbrick *v.* Skelmersdale, 17 Sim. 187; Turvin *v.* Newcome, 3 K. & J. 16; Harg. Thel. Act, §§ 74, *et seq.*; Curran *v.* Phila. Trust Co. 39, Leg. Int. 158. McKees' App. 15 N. 284; Carson's App. 3 Out. 325; Odell *v.* Odell, 10 Allen 1.



## CHAPTER VI.

### TRUSTS AND DIRECTIONS SUBJECT TO THE STATUTES

#### 1. *Express and implied directions to accumulate.*

§ 96. Trusts for accumulation created by an express direction to "accumulate," "to raise out of the rents and profits," "to lay up and invest," and similar directions, fall directly within the scope of the statutes and are expressly subject to their provisions.

§ 97. Sometimes, however, a trust for accumulation is created by an implied direction to accumulate. The law as applicable to this class of trusts, is now, after much controversy, well established; and it is finally held, that, wherever property is disposed of "in such manner that the rents, issues, interests or profits thereof, shall be wholly or partially accumulated," such disposition will be considered to be subject to the provisions of the statutes, even though there be no express direction to accumulate. For "in applying the statutory provisions against accumulation," says Mr. Jarman,<sup>1</sup> "regard is had to the substance and effect and not to the mere form or language of the instrument."

§ 98. The commonest instances of trusts for accumulation created by operation of law arise out of executory bequests of personal property, given upon a contingency, when the surplus intermediate income is left undisposed of. In such cases, the Courts, as we have already seen,<sup>2</sup> held, long before the Thellusson Act, that the surplus intermediate income should be accumulated and go with the principal.

§ 99. With respect to some of the cases of trusts of this class that have arisen since the passage of the Thellusson Act, the contingency, on which the vesting of the beneficial interest depended, has been usually either the attainment of the age of twenty-one years by a legatee *in esse* at the death of the testator, or some other event within the period allowed by the act, consequently, no question could arise in these cases respecting the application of the Thellusson Act to implied trusts for accumulation.<sup>3</sup>

§ 100. But it is now fully established that trusts for accumulation created by the Courts from implied directions to accumulate are subject to the Thellusson Act. If, therefore, the event upon which the vesting of an executory bequest of personal property depends is

<sup>1</sup> Jarman on Wills, vol. 1, p. 313.

<sup>2</sup> Studholme v. Hoelgson, 3 P. Wms. 300; Green v. Ekins, 3 P. Wms. 305. See §§ 6, 7, ante.

<sup>3</sup> Glanvill v. Glanvill 2 Meriv. 38; Gordon v. Rutherford, 1 Tur. & Russ. 373, Harg. Thel. act §§ 65, 66.

within the limits prescribed by the rule against perpetuities, but beyond those fixed by the Thellusson Act, it follows that, if there is no express application of the income accruing in the interval, the statute is infringed and no accumulation of the intermediate income can take place beyond the period allowed by the Thellusson Act.

§ 101. When the question of the applicability of the Thellusson Act to implied directions to accumulate first came before the Courts, Sir Lancelot Shadwell, V.C., ruled that the Act applied only to an express direction to accumulate and did not affect what might be called a necessary accumulation, which arose from the nature of the gift,<sup>1</sup> and his decision was approved by Stuart, V.C.<sup>2</sup> and Romilly, M.R.<sup>3</sup> But the great weight of authority, upon this question, including a decision of the highest Court of Appeal, is opposed to the above ruling.<sup>4</sup>

§ 102. "The decisions of Sir Lancelot Shadwell," says Mr. Gray,<sup>5</sup> "seem to have been based on the mistaken analogy of infancy. The fact that, at the end of a period of accumulation, the person entitled to the property may be an infant, and that, therefore, the income may have to be accumulated longer, is no objection to the prior accumulation. This further accumulation is not a consequence of any act of the settlor or testator; he could not give authority to the infant to deal with the property, if he would."<sup>6</sup> But this furnishes no justification for Shadwell, V.C.'s decisions. In cases like those before him, the provisions for accumulation are entirely in the control of the testator; the testator could prevent the income going with the principal if he saw fit, and the implied direction is as much his act as an express direction would be."<sup>7</sup>

§ 103. In *Tench v. Cheese*,<sup>8</sup> Sir J. Romilly, M.R., ruled that, since the will in this case contained no express direction to accumulate, the Thellusson Act did not apply. But this ruling was reversed on appeal by the Lord Chancellor and Lord Justices,<sup>9</sup> and

<sup>1</sup> *Elborne v. Goode*, 14 Sim. 165; *Bridgenorth v. Collins*, 15 Sim. 538.

<sup>2</sup> *Mathews v. Keble*, L. R. 4 Eq. 467.

<sup>3</sup> *Bryan v. Collins*, 16 Beav. 14; *Tench v. Cheese*, 19 Beav. 3.

<sup>4</sup> *Evans v. Hellier*, 5 Cl. & Fin. 114; S. C. *sub. nom.*; *Shaw v. Rhodes*, 1 My. & Cr. 135; *Macdonald v. Bryce*, 2 Kee. 276; *Morgan v. Morgan*, 20 L. J. Ch. 111, 15 Jur. 319; *Bective v. Hodgson*, 10 H. L. C. 656, 664, 671; [see *Mathews v. Keble*, L. R. 4 Eq. 467, 472;] *Pursell v. Elder*, 4 Macq. 992; *Wade-Gery v. Handley*, 1 Ch. D. 653, 664; 3 Ch. D. 374; *Ralph v. Carrick*, 5 Ch. D. 984, 997, 998; 11 Ch. D. 873; *Lord v. Colvin*, 23 D. 111. See *Tench v. Cheese*, 6 De G. M. & G. 453, 462, 463; *Macpherson v. Stewart*, 28 L. J. Ch. 177; 32 L. T. 143; *Mathews v. Keble*, L. R. 3 Ch. 691; *Mackenzie v. Mackenzie*, 4 R. 962; *Smyth v. Kinloch*, 7 R. 1176; *Harg. Thel. Act*, § 67, *et seq.*; 1 Jarm. Wills. (4th ed.) 313, 314; *Marsden Perp.* 325-330.

<sup>5</sup> Gray on Perp. § 691.

<sup>6</sup> See *Griffiths v. Vere*, 9 Ves. 127, 136 and cf. *Sombe v. Stoughton*, 12 Sim. 304.

<sup>7</sup> See *Tench v. Cheese*, 6 De G. M. & G. 453, 462, 463; *Mathews v. Keble*, L. R. 3 Ch. 691, 696; *Bryan v. Collins*, 16 Beav. 14; 1 Jarm. Wills. (4th ed.) 314; *Marsden Perp.* 330, and cf. *Wilson v. Wilson*, 1 Sim. N. S. 288.

<sup>8</sup> 19 Beav. 3.

<sup>9</sup> *Tench v. Cheese*, 6 De G. M. & G. 453.

though the reversal rested upon the ground that as the will was worded, an accumulation was expressly directed, nevertheless Lord Chancellor Cranworth says,<sup>1</sup> "The ground on which the Master of the Rolls has proceeded in the case before us is this: he says that there is no express direction in the will to accumulate, that the accumulation takes place not by reason of any direction of the testator, but by reason of the property being given contingently after an indefinite lapse of years, during which time, if there is nobody to enjoy it, it must by the rule of the Court be accumulated, and that this is not what the statute in terms points out or means to restrain.

\* \* \* \* My opinion, so far as it goes, is that the distinction is an unsound and impossible one. If a testator directs that to be done which, as a necessary consequence, leads to an indefinite accumulation, he must within the meaning of the statute be taken to have directed accumulation: that rests on a principle of law which is applied to every case and is pre eminently applicable in cases of construction of wills. \* \* \* \* The leaning then of my opinion is, that, if I had to decide the point, I should hold that if a testator directs his property to go in such a course, that upon certain contingencies there must be an accumulation beyond twenty-one years, he does direct that upon those contingencies the accumulation shall take place beyond that time. Nor do I think that this opinion is at all interfered with by what fell from Lord Eldon in *Griffiths v. Vere*;<sup>2</sup> in truth I never thought that illustration used by Lord Eldon was made with his usual felicity, where he speaks of property getting into the hands of an infant, and the Court then directing it to be accumulated. Accumulation there has a different meaning and aspect from accumulation directed while the enjoyment of the property is in suspense. In the instance of property coming to an infant, accumulation is only just that which if it was not the case of an infant, the owner might do for himself; if he chooses to accumulate the rents instead of spending them, he may do so; and when the property comes to an infant, as the infant has no will to say whether it shall be spent or accumulated, the Court expresses its will for the infant, and says that the most advantageous way of applying the rents is to accumulate them for him, that is, for the benefit of the person who is in possession; this is a totally different thing from accumulating a fund, so that it is to go as a suspense fund after an indefinite lapse of time to somebody for whose benefit it was not accumulated and who was not in the enjoyment during the time of accumulation: the illustration therefore does not seem to me to bear at all upon the present case."

§ 104. These cases have established the rule now in force with reference to the applicability of the *Thelluson* Act to implied directions to accumulate, and even in cases where the direction to accumulate is simply ordered by the Court alone from the necessity

<sup>1</sup> *Tench v. Cheese*, 6 De G. M. & G. 461, 463.

<sup>2</sup> 9 Ves. 127.

of the case, without actually implying a direction springing from the language of the instrument, the Act is held to apply; for to have held otherwise would have been in effect to have introduced an easy mode of its evasion; as nothing is easier than to limit real and personal property so as to raise a trust for accumulation by implication, and, since the practice of the Court is always to accumulate, settlors and testators would direct their estates to be administered by the Court.

§ 105. The principles of the above rule have been recognized and adopted in Pennsylvania, and the Pennsylvania Statute against accumulation is held to apply to all implied as well as to all express directions to accumulate.<sup>1</sup>

## 2. Simple and compound accumulation.

§ 106. The Statutes apply to accumulation, whether of the whole or of part of the income and whether at simple or compound interest.<sup>2</sup>

§ 107. A settlor or testator creates a trust for accumulation at simple interest when he directs the collection of a principal sum by the mere addition of the annual proceeds, while at the same time he allows the interest on this accumulating fund either to be paid *de anno in annum* to the residuary devisee or legatee, or allows it to result to himself or his representatives as property undisposed of.

§ 108. A trust for accumulation at compound interest is created when in addition to the accumulation of the annual income at simple interest, the accumulating fund is further increased by the addition of the interest upon the accumulating income.

§ 109. The statutes apply to accumulations arising out of an estate held under a deed just as they would if held upon the same terms under a will; and it can make no difference as to the disposition of such accumulations, whether they accrued prior to the death of the settlor or after that event.<sup>3</sup>

§ 110. If the person to whom the accumulated fund is to be paid has a vested indefeasible interest in the accumulations as they arise or an absolute right to the possession of the principal out of which the accumulations issue, then the direction to accumulate whether express or implied, is an illegal restraint on alienation and such person can stop the accumulation at any time. Consequently, such a direction to accumulate, since it is destructible at any time, is not

<sup>1</sup> Mitcheson's Est. 11 W. N. C. 547; Butler v. Butler, 9 Phila., 269; Hawley v. James, 5 Paige, 318, 16 Wend. 61; see also Vail v. Vail, 4 Paige, 317; Eberly's App., 17 W. N. C. 1; Williams' Est. 8 W. N. C. 310; Thouron's Est. 11 W. N. C. 285.

<sup>2</sup> Shaw v. Rhodes, 1 M. & C. 135; S. C. *sub nom.*; Evans v. Hillier, 5 Cl. & Fin. 114.

<sup>3</sup> Carson's Appeal, 3 Out. 325.

obnoxious to the statutes against accumulation, any more than it is to the rule against perpetuities.<sup>1</sup>

§ 111. But the Thellusson Act applies, says Mr. Lewin,<sup>2</sup> though the accumulating fund be from the first a vested interest, so that not the right to the enjoyment, but only the actual enjoyment, is suspended; as where a settlor directs rents to be accumulated to raise a certain sum for A., to be paid to him on the completion of the accumulation; so that A. has a vested interest in the rents as they arise.<sup>3</sup>

§ 112. A bequest to an executor, in trust for the son of the testatrix, who had sailed in a particular vessel, and of whom no tidings had been heard for many years, "in case he can be found after diligent inquiry, correspondence and publication for the space of twenty full years" after her decease, with remainder over, was considered not to be a trust for accumulation forbidden by the Pennsylvania Act of 1853.<sup>4</sup> In delivering the opinion in this case Hanna J. said, "Here there is no direction to accumulate, although it is clearly the duty of the trustee to invest; the term fixed is but twenty years, and if our view be correct, the trust is determined at any time upon proof of the death of the son of testatrix, and eventually at the expiration of the limit indicated by her."

§ 113. Finally it may be laid down as a general principle, resulting from our inquiry so far into the nature of the trusts and directions subject to the statutes against accumulation, that, whenever, according to any deduction whatsoever, any portion of the current income arising out of either real or personal property is in substance and effect directed to be laid up and invested until a future restricted period or until the happening of a certain event or contingency, and is not beneficially enjoyed *de anno in annum*, a trust for accumulation is to that extent created, which must be carried on by the trustees subject to the restrictions imposed by the statutes against accumulation.

### 3. *Directions to accumulate incidental and subsidiary to general trusts.*

§ 114. In Mitcheson's Estate<sup>5</sup> there was no express direction to accumulate and the only disposition of the income of a trust estate was contained in a direction to pay to each of the testator's daugh-

<sup>1</sup> See § 55, *et seq. ante*, Marsden Perp. 333; Gray on Perp. § 692. When, therefore, there is an indefeasible gift to a legatee, the legatee has a right to the property at twenty-one, and a direction to accumulate will only be valid till then; and this will be the case, it would seem, even though the direction to accumulate may be for a period exceeding the limits allowed by the Thellusson Act. *Gosling v. Gosling*, Johns. 265; *Coventry v. Coventry*, 2 Dr. & Sm. 470, and *Phillips v. Phillips*, W. N. 1877, 260.

<sup>2</sup> Lewin on Trusts, p. 90.

<sup>3</sup> *Shaw v. Rhodes*, 1 M. & Cr. 135; see *Oddie v. Brown*, 4 De. G. & Jon. 179.

<sup>4</sup> *Williams Est.* 8 W. N. C. 310.

<sup>5</sup> 11 W. N. C. 547.

ters and to one of his sons an annuity of three hundred dollars per annum for life, with a further provision that if in any one year there should not be enough to pay the annuities, the deficiency should be made up from any surplus of former years that may then be in the trustee's hands, and that after payment of the annuities in full the surplus may be applied by the trustees in the alteration or repair of the trust estate. In this case the Court held, that, from the necessary effect of the language of the instrument creating the trust, there was an implied direction to accumulate the surplus income of the trust estate, in order to cover any deficiencies in the annuities during future years, and that such a direction constituted an illegal trust for accumulation under the Pennsylvania Act of April 18th, 1853, § 9. And it was also held that the direction to appropriate the surplus income to the improvement and repair of the real estate belonging to the trust would not prevent the trust from being void under the statute, as an implied direction to accumulate.

§ 115. In the case of *Mathews v. Keble*,<sup>1</sup> Sir C. J. Selwyn, L.J., in delivering his opinion, said, "It has been said, that, inasmuch as the amount is variable and subject to be changed from time to time in the discretion of the trustees, the Act does not apply; but it is obvious, if the Act had been limited to cases in which nothing but a certain or invariable amount is directed to be accumulated, all cases where simple payments are to be made for the benefit of the family or the estate, as, for instance, for repairs, all of which must necessarily be within the discretion of the trustees, would be excluded from the operation of the Act. I think there is neither authority nor principle to be found in support of such a proposition."

§ 116. In *Eberly's Appeal*,<sup>2</sup> a testator devised and bequeathed his residuary estate, including certain realty, to a trustee in trust to manage the same, and out of the income to make repairs, pay an annuity, and to maintain and educate his son during minority. Upon his son's reaching majority the trustee was to pay to him five hundred dollars, and the like sum annually until the son was twenty-five, when the corpus was to be paid to him, if the trustee thought fit, but if not it was to continue to be held in trust. At the date of the son's majority the accumulated income amounted to about five thousand dollars, which he claimed should be paid over to him. The Court held, that, the said sum did not exceed a reasonable contingent fund which the trustee might require in the administration of the trust, and that therefore it was not accumulated income within the prohibition of the Pennsylvania Statute against accumulation, and neither the son nor his creditors were entitled to receive the same. For when a testator creates an active trust for various purposes, and incidentally directs an accumulation of income be-

<sup>1</sup> 3 L. R. Ch. App. Cas. 699.

<sup>2</sup> 17 W. N. C. 1.

yond the period permitted by the Act of 1853, and at the expiration of such period the accumulated income does not exceed in amount what may reasonably be required to maintain the corpus of the trust estate and to carry out the lawful trusts, such accumulated income is not within the intent of the Act. In delivering the opinion of the Court in this case <sup>1</sup> Sterrett, J., said: "It is not essential that the direction to accumulate should be expressed. If the estate is disposed of so or in such manner that accumulations clearly beyond what may be reasonably required to fully and effectually carry out the provisions of the trust, must necessarily exist, it amounts to an implied direction to accumulate. But, in determining whether the excess of income over and above disbursements and expenses, at any given time, is an accumulation within the prohibition of the statute or not, regard must be had to the trust property and the duties imposed on the trustee. If, as in this case, the trust is an active and continuing one, involving principally the management of real estate, keeping the same in repair, etc., as the trustee 'would his own property,' and paying out of the proceeds thereof an annuity and other fixed charges, as well as uncertain and contingent outlays and expenses, care must be taken not to strip the trustee of a contingent fund upon which he may be required to draw to meet the exigencies of the trust. In this case the so-called accumulations upon which the improvident *cestui que trust* is so anxious to lay his hands, amount to about five thousand dollars, a sum that, for aught we know, would not be more than sufficient to replace the buildings on the farm in case they should be destroyed. The failure or destruction of crops, even for a single year, might so lessen the income as to necessitate the use of part of the balance on hand to pay the annuity and meet other pressing demands on the trustee. The corpus of the trust is unlike that composed of cash or good interest-bearing securities yielding a comparatively certain and uniform income."<sup>2</sup> Consequently, it follows from this decision, that if the accumulated income does exceed the reasonable amount above referred to, the statutes would apply to the excess over the amount necessary to carry out the lawful trusts.

§ 117. So when property is directed to be applied to certain purposes at once, but is accumulated owing to the neglect of trustees, or from some other reason, the statutes do not apply.<sup>3</sup>

§ 118. In *Lombe v. Stoughton*,<sup>4</sup> the direction to accumulate was merely subsidiary to the general trusts. Here a testator, after devising his estates in strict settlement, directed that, in case he should not erect a mansion-house on his estates in his lifetime, his trustees should, forthwith after his death, erect the same according

<sup>1</sup> Eberly's Appeal, 17 W. N. C. 2.

<sup>2</sup> See also Conrow's App., 3 Pennypacker, 356.

<sup>3</sup> *Lombe v. Stoughton*, 12 Sim. 304.

<sup>4</sup> 12 Sim. 304.

to such plan as he should approve of in his lifetime; or, if he should die before such plan should be prepared and completed, then according to such plan as his trustees, with the consent of the person, for the time being beneficially entitled to the immediate freehold of his estates, should think proper to adopt; and he gave twenty thousand pounds to the trustees, to be applied in erecting the house, and in the meantime, to be laid out in the funds and the dividends to be accumulated, and the accumulations, as well as the original fund, to be applied in erecting the house, and the surplus (if any) to be laid out in the purchase of lands to be settled to the same uses as the devised estates. Owing to opposition on the part of the tenant for life, the trustees did not build the house until more than twenty-one years after the testator's death; and they invested the twenty thousand pounds and accumulated the income of it during the whole of the interval. It was held that the direction for accumulation was not within the Thelluson Act, but that the whole of the accumulated fund was applicable to purposes directed by the will.

§ 119. In *Bassil v. Lister*,<sup>1</sup> a testator directed his trustees to pay, out of the income of his property, the premiums upon certain policies of insurance, which had been affected by him in his lifetime upon the lives of his sons, the policies to be settled in case of marriage for the benefit of their wives and children. Turner, V.C., held that the direction was not a trust for accumulation within the scope of the Thelluson Act, and was valid for the whole of the lives insured and not merely for twenty-one years after the testator's death. This decision is severely criticised in *Jarman on Wills*.<sup>2</sup> But it would seem, says Mr. Perry,<sup>3</sup> that it would not be illegal for a testator to direct the premiums to be paid upon a life policy, if the primary object of such a direction is not accumulation, but security and safety.

#### 4. *Spendthrift trusts in Pennsylvania.*

§ 120. As before remarked,<sup>4</sup> neither the common law nor equity, either in England or throughout the United States, allows restraints against the alienation of property, and any provision restraining the alienation, voluntary or involuntary of any estate in either real or personal property, whether legal or equitable is void; except in the well known case of property settled or devised to the sole and separate use of married women where the provision against anticipation is upheld in all estates. Consequently, no interest, real or personal, legal or equitable, can be held by any person in such a

<sup>1</sup> 9 Hare, 177; see also *Re Vaughan*, W. N. 1883, p. 89.

<sup>2</sup> 1 Jarm. Wills (4th Ed.) 314, *et seq.*

<sup>3</sup> 1 Perry on Trusts, p. 503.

<sup>4</sup> See § 53, *ante*.



way that he can enjoy the income or benefits thereof, but cannot alienate it and subject it to his debts.

§ 121. In Pennsylvania by a rule of law peculiar to that State, restraints against alienation can be attached to equitable life interests and the trusts in which such restraints are allowed are called spendthrift trusts.<sup>1</sup> Trusts of this class of very common occurrence in Pennsylvania and are of two kinds.

§ 122. 1. When an estate is vested in a trustee and only the income is to be given to the *cestui que trust* for life with an express proviso that this income shall not be liable for his debts, the law in Pennsylvania, no matter how unreasonable and unjust it may appear, seems to be now well established, that creditors cannot reach either the income or the corpus of the trust estate.<sup>2</sup>

§ 123. Mr. Gray remarks,<sup>3</sup> that he believes the early wants of equity jurisdiction in Pennsylvania had much to do with the origin and rise of spendthrift trusts in that State, and that after the Courts acquired the necessary jurisdiction the hold thus obtained by such trusts was too strong to be shaken off.

§ 124. But, apart from this, the building up of this disadvantageous and unnatural rule of law, so popular in Pennsylvania, has, in fact, in that State, depended for its foundation upon *obiter dicta* found in early cases. In truth, the only case where the purely abstract doctrine of spendthrift trusts has been strictly employed is Overman's Appeal,<sup>4</sup> with probably the exception of Shankland's Appeal,<sup>5</sup> where the Supreme Court of Pennsylvania for the first time made an actual decision in favor of this class of trusts.

§ 125. The effect produced by this kind of spendthrift trusts is derived from the force of the express proviso, "not liable for debts." But when nothing is said about creditors or involuntary alienation, the creditors may attach the income in the hands of the trustees.<sup>6</sup> And it may be remarked that one who is *sui juris* cannot put his own property for his own use, benefit or support, so as to prevent creditors from attaching it.<sup>7</sup>

§ 126. 2. There is another class of trusts in Pennsylvania which are, no matter how incorrectly, classified under the general head of spendthrift trusts. Such trusts arise when property is devised to

<sup>1</sup> Such restraints are also allowed in Massachusetts and the trusts in which they are allowed are also called spendthrift trusts. See *Broadway Bank v. Adams*, 133 Mass. 170. In the Federal Courts of the United States the dicta are conflicting. In several States such restraints are more or less permitted by statute. See the whole matter discussed in Gray's *Restraints on the Alienation of Propriety*. See also Gray on Perp. §§ 719-722 b.

<sup>2</sup> Overman's App. 88 Pa. St. 276, and for series of cases on the same subject and a discussion of them, see Gray on *Restraints on Alienation*, §§ 214-235.

<sup>3</sup> Gray on Res. on Alienation, § 217, and Gray on Perp. § 720 note.

<sup>4</sup> 88 Pa. St. 276.

<sup>5</sup> 47 Pa. St. 113.

<sup>6</sup> *Girard Life Ins. Co. v. Chambers*, 10 Wr. 485.

<sup>7</sup> *Mackason's App.* 6 Wr. 330.

trustees in trust and the trustees have a discretion as to whether they will pay the income of the property to the *cestui que trust* or not. In such a case, chancery will not interfere to control the trustee's discretion. Consequently the money in the hands of the trustees cannot be reached by the creditors of the *cestui que trust*, since the *cestui que trust* has nothing until the trustee's discretion is exercised. To subject the income to an execution would end the trustee's discretion and defeat the testator's intention. Here the trustees are authorized to apply so much of the income of the fund as they deem best for the benefit of the *cestui que trust* for life, with remainder over upon his death. There is no express direction what shall be done with any income not required by the trustees for the support of the *cestui que trust*. And it is held that neither, the *cestui que trust*, nor his creditors, can compel the trustees to pay the whole income to him or them,<sup>1</sup> and that any accumulated surplus income does not belong to the *cestui que trust* or his legal representatives.<sup>2</sup> This form of guarding the trust and the income from the prodigality of a *cestui que trust* is as effectual in Pennsylvania as an express exclusion of the creditors by the will.<sup>3</sup>

§ 127. The growth of spendthrift trusts in Pennsylvania has been without regard to precedent of any kind in any other State, and it would seem that, from the severe manner in which this class of trusts have been criticised on all sides, that future judges of Pennsylvania or of any other State, who are asked to support such trusts on the authority of the Pennsylvania Courts, may well hesitate to continue a doctrine which Chief Justice Agnew, in Overman's Appeal,<sup>4</sup> has declared to contravene that general policy of the law "which forbids restraints on alienation and the non-payment of honest debts."<sup>5</sup>

§ 128. The question now arises, how are trusts of this class to be affected by the Pennsylvania Statute against accumulation? This question has always been a mooted one and the doubt upon it has been much increased by the non-committal *dicta* in the late case of Eberly's Appeal,<sup>6</sup> from which we assume that the question is still left an open one. Notwithstanding this, the better opinion seems to include spendthrift trusts within the scope of the Pennsylvania Act of 1853 and to make them subject to all the restrictions of that Act.

§ 129. In Matter of Sergeant,<sup>7</sup> a testator bequeathed the sum of twenty thousand dollars to trustees in trust to invest the same, and the actual income thereof, or so much of the same as they should from time to time deem necessary and proper for the comfortable

<sup>1</sup> Horwitz v. Norris, 49 Pa. St. 213, 222.

<sup>2</sup> Huber's App. 80 Pa. St. 348.

<sup>3</sup> Keyser v. Mitchell, 17 Smith, 473.

<sup>4</sup> 88 Pa. St. 276.

<sup>5</sup> See Gray on Res. on Alien. § 235.

<sup>6</sup> 17 W. N. C. 1, see *ante*, § 116.

<sup>7</sup> 11 Phila. 8.

maintenance and support of his son; and further, in trust to invest and accumulate during the lifetime of his said son all such sums of money, parts or portions of said income, as might not, in the judgment and discretion of said trustees, be necessary for his maintenance and support; and such accumulations from time to time, to hold upon like trusts with those upon which said principal sum is held; upon the death of the said son the principal and all accumulations was given over to certain specified persons. It was held that the provision to accumulate the balance and add it to the principal was in violation of the Act of 18th April, 1853, § 9, and that the balance not spent in the maintenance and support of the son must come within the operation of the residuary clause of the will and form part of the residuary estate. Here was an express direction to accumulate the balance of the income of property not used by trustees under a discretionary power and to add the surplus thus accumulated to the principal of the fund during the life of the *cestui que trust* who is a tenant for life. Such a direction, under the construction of the Pennsylvania Statute of 1853, as established in *Washington's Estate*.<sup>1</sup> In England, under the *Thellusson Act*, such a direction would be good for twenty-one years, but after that period the accumulation would be stopped.<sup>2</sup>

§ 130. In *Barger's Appeal*,<sup>3</sup> a testator devised and bequeathed to his wife his whole residuary estate, in trust, to apply one-third the net income to herself, and two-thirds part thereof among his children, each child to have an equal share. At the expiration of seven years from his death, testator authorized his wife to make partition of his estate among his children in equal shares, (or if any should die, to their children the parent's share) said partition to vest the estates according to the terms thereof, as fully as if therein devised. Testator further empowered his wife to make said partition upon such trusts and limitations as she should see proper, and directed, that, until said partition, no interest in his estate should vest in his said children. Testator further empowered his wife in her discretion to retain the whole or any part of each child's share, and to incorporate the same in said partition. It was held that no interest in the principal of the testator's estate vested until the expiration of seven years from his death and the making of the partition, and that where the income arising from any share was retained in accordance with the discretionary power in the will, the same became a part of the principal, and did not vest until the share of which it formed a part was allotted; and this implied discretionary power to accumulate was held not to be subject to the Act of 1853.

§ 131. In remarking upon this case Mr. Gray says,<sup>4</sup> "The ground

<sup>1</sup> 75 Pa. St. 102; S. C. 8 Phila. 182; see § 150, *post*.

<sup>2</sup> 4 Dav. Prec. Conv. (3rd ed.) 168; Hayes & Jarm. Forms of Wills (8th ed.) 215, 216; Gray on Perp. § 719.

<sup>3</sup> 100 Pa. St. 239.

<sup>4</sup> Gray on Perp. § 722.

would seem to be that the power was discretionary,<sup>1</sup> and the same reason would sustain spendthrift trusts. There appears to be no particular cause why a discretionary power to accumulate should be made an exception,—the statute is in very positive terms; and in *Matter of Sergeant*<sup>2</sup> such an express discretionary power was held to violate the statute; yet certainly there should be no difference between an express and an implied discretion.”

§ 132. In *Grim's estate*<sup>3</sup> Penrose, J., says, “In view of the recent decision of the Supreme Court, in *Barger's Appeal*, it is not easy to say what the law with regard to trusts for accumulation is. In that case it was held that a provision which gave the trustee a discretionary power to withhold income from adult children of the testator, and, at the expiration of a term of years, capitalize it, was not in contravention of the Act of Assembly. As sustaining this decision, *Huber's Appeal*; <sup>4</sup> *Keyser v. Mitchell*; <sup>5</sup> and *Brown v. Williamson*<sup>6</sup> were cited. *Huber's Appeal* arose under the will of the testator who died twenty-two years before the passage of the act. *Keyser v. Mitchell* was decided before the decision in *Washington's estate*,<sup>7</sup> no question whatever being raised with regard to the act; and *Brown v. Williamson* expressly admitted that the trust for accumulation was invalid, the point decided being that such invalidity did not extend to the entire trust, of which the direction to accumulate was only an incident. It is by no means clear, therefore, that it is not the intention to get rid of the doctrine of *Washington's estate*, which was never regarded with favor by the profession, and which was followed in the late case of *Carson v. Rutter*,<sup>8</sup> solely on the ground of *stare decisis*, by judicial legislation of the same character as that which practically repealed the Statute of Uses; and to put it into the powers of every testator, by the simple expedient of a discretionary power to a trustee, to accomplish that which the act says shall not be done by “deed, will or otherwise”—a method which does not seem to have ever occurred to the judges of the English Courts.”<sup>9</sup>

§ 133. But nevertheless to allow spendthrift trusts to constitute an exception to the act of 1853 would in effect open a wide door of escape from the restrictions of that act for those who wished to evade its provisions. The construction put upon the act in *Washington's estate*<sup>10</sup> is still law, and there does not seem to be any reason why a discretionary power to accumulate should be made an exception to the positive restraints of the statute.

<sup>1</sup> See also *Conrow's Appeal* 3 Penny. p. 356, 366.

<sup>2</sup> 11 Phila. 8, § 129 *ante*.

<sup>3</sup> 15 Phila. 603, 12 W. N. C. 354.

<sup>4</sup> 30 P. F. Smith, 349.

<sup>5</sup> 17 P. F. Smith, 473.

<sup>6</sup> 12 Casey, 338.

<sup>7</sup> 25 P. F. Smith 102. See § 150 *post*.

<sup>8</sup> 12 W. N. C. 161. See § 155 *post*.

<sup>9</sup> 1 Jarman on Wills, 274.

<sup>10</sup> 25 P. F. Smith, 102. See § 150 *post*.

§ 134. In Eberly's Appeal,<sup>1</sup> the Court had no opportunity to consider the question of whether or not the Pennsylvania statute against accumulation in any way affected spendthrift trusts, still the point was argued before them; and although, in consequence of the decision in this case, the whole question is still left an open one, nevertheless the opinion of Sterrett, J., rather points in the direction of disallowing accumulations under spendthrift trusts. He says, "The language of the act is very comprehensive, and while it is perhaps to be regretted that it is so sweeping in its terms, we are constrained to adhere to the construction that has heretofore been given it. \* \* \* \* \* It is not essential that the direction to accumulate should be expressed. If the estate is disposed of so or in such manner that accumulations, clearly beyond what may be reasonably required to fully and effectually carry out the provisions of the trust, must necessarily exist, it amounts to an implied direction to accumulate."

---

<sup>1</sup> 17 W. N. C. 1. See § 116 *ante*.

## CHAPTER VII.

### STATUTORY LIMITS FOR ACCUMULATION.

1. *Periods during which accumulation is allowed by the Thellusson Act.*

§ 135. It has already been remarked that, at the common law, trusts for accumulation might endure to the full limit of valid executory devises, or in other words to the full limits allowed by the rule against perpetuities. This rule against perpetuities applied to the income directed to be accumulated as well as to the *corpus* out of which such accumulations issued. As to the latter, the statutory rules against accumulation make no change, but with respect to the former, they introduce more stringent rules than the former rule against perpetuities, and declare that a direction to accumulate, for a longer time than the periods therein specified allow, shall be void.<sup>1</sup> Therefore, to any period within the compass of the rule against perpetuities, a settlor or testator may still postpone the vesting of the beneficial interests in real estates whose rents and profits, or in the personal estate whose interest or dividends, he intends to subject to accumulation. So also, to any period within the same compass he may postpone the vesting of the beneficial interests in any estates or funds to be raised by an accumulation protected by any period allowed by the statutory rules against accumulation. In other words, the rule against perpetuities is still the sole boundary to the postponement of the vesting of the beneficial interests, as well of the accumulated income as of the *corpus* out of which such accumulations issued.

§ 136. By the first section of the Thellusson Act it is enacted, that no person shall settle property, so that its income shall "be wholly or partially accumulated for any longer term than" during any of the four following periods, only one of which can be taken as the limit to each accumulation.<sup>2</sup>

§ 137. I. The first period is "the life or lives of any such grantor or grantors, settlor or settlors." No question has ever arisen under this period of the Thellusson Act nor is any likely to arise.<sup>3</sup>

§ 138. II. The second period is "the term of twenty-one years from the death of any such grantor, settlor, deviser or testator." This period begins to run from the date of the deed of transfer or

<sup>1</sup> Eberly's App. 17 W. N. C. 2; *Haley v. Bannister*, 4 Mad. 275.

<sup>2</sup> *Rosslyn's Trust*, 16 Sim. 391; *Wilson v. Wilson*, 1 Sim. N. S. 288; *Jagger v. Jagger*, 25 Ch. D. 729. But see 2 Prest. Abs. 180, *Harg. Thel Act*, §§ 109, 110.

<sup>3</sup> *Heywood v. Heywood*, 29 Beav. 9; *Harg. Thel. Act*, § 89.

the death of the testator, exclusive however, of the day of his death.<sup>1</sup>

§ 139. III. The third period is "during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère* at the time of the death of such grantor, deviser or testator." It has already been remarked,<sup>2</sup> that, the Court will direct, where the will authorizes it, an accumulation of the surplus intermediate income arising out of bequests or devises, during the above period, in all cases where the person to whom the accumulated income is to be paid is an infant who, at the expiration of his minority, is to become entitled to the beneficial ownership of the property out of which the accumulations issue and have a vested indefeasible right to the possession of the principle and income. Consequently, in all such cases, permission to direct accumulation for the above period is simply declaratory of the common law rule, and the income is accumulated by the courts either for the benefit of the infant himself or of his representatives, but never for the benefit of other persons.

§ 140. Under this period of the Thellusson Act, however, a settlor or testator may select the minority of any person "who shall be living or in *ventre sa mère* at the time of" his death, as the measure of the duration of the accumulation directed.<sup>3</sup>

§ 141. IV. The fourth period is "during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will or other assurances, directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues and profits, or the interest, dividends or annual produce so directed to be accumulated." Under this clause of the Thellusson Act it has been held that an accumulation can only take place during the minority or successive minorities of persons in existence at the time the will came into effect, for the Act does not permit an accumulation to be made during the minority of a person and a time to elapse between the death of the testator and the commencement of the minority. Consequently, an accumulation beginning at the death of the testator cannot continue till the coming of age of a minor who is unborn at the time the accumulation begins, but it lasts only for twenty-one years from the testator's death, as allowed by the second period of the Act.<sup>4</sup>

<sup>1</sup> Webb v. Webb, 2 Beav. 493; A. G. v. Poulden, 3 Hare 555; Shaw v. Rhodes, 1 Myl. & Cr. 135; Nettleton v. Stephenson, 3 De G. & Sm. 366; Gorst v. Lowndes, 11 Sim. 434; St. Aubyn v. St. Aubyn, 1 Dr. & Sm. 611; Bengough v. Edridge, 1 Sim. 173; Lewis v. Lewis, 6 Sim. 304; Scott v. Earl of Scarborough, 1 Beav. 154. It is to be noted that this is the period to which accumulations directed for periods illegal under the Thellusson Act are cut down, see § 157, *post*, Harg. Thel. Act §§ 90-92.

<sup>2</sup> See § 4 *et seq. ante*.

<sup>3</sup> Kime v. Wellfit, 3 Sim. 533; Arnott v. Bleasdale, 4 Sim. 387; Johnson v. Johnson, 1 Keen, 648; Harrison v. Harrison, 1 Keen, 765; Hulme v. Hulme, 9 Sim. 644; Easum v. Appleford, 10 Sim. 274; Harg. Thel. Act, §§ 93, 94.

<sup>4</sup> Griffiths v. Vere, 9 Ves. 127; Longden v. Simson, 12 Ves. 295; Haley v. Bannister, 4 Mad. 275; Ellis v. Maxwell, 3 Beav. 587.

§ 142. In *Haley v. Bannister*,<sup>1</sup> a testator directed the dividends of certain stocks to be accumulated until one of the children of his daughter, born, or to be born, should attain the age of twenty-one years, at which time both the stocks and the accumulated dividends were to be transferred to such child, or any other child or children who might be then living; the will contained a residuary clause. Sir J. Leach, V. C., said: "The statute prevents an accumulation of interest during the minority of an unborn child; but as to the principal the law remains as before the statute. The excess of accumulation prohibited by the statute would form part of the residue." This judgment, or rather dictum, is confirmatory of the decisions in *Griffiths v. Vere*,<sup>2</sup> and *Longden v. Simon*,<sup>3</sup> and has been followed by Lord Langdale in *Ellis v. Maxwell*.<sup>4</sup>

§ 143. These cases have decided that accumulations could not be made during the minority of a person unborn at the death of the testator. But Mr Jarman<sup>5</sup> has interpreted the judgment in *Haley v. Bannister*<sup>6</sup> to mean that accumulations could not be made under this period of the Act until a person unborn at the testator's death should come of age, which was the case then under consideration, and that this decision could only mean that the whole of such period could not be taken and not that the part commencing with the birth of such a person could not be taken separately, so as to allow accumulations beginning at the birth of a person unborn at the testator's death to continue until he is twenty-one years of age.<sup>7</sup> But if this latter accumulation is prohibited by the Act, then the fourth period adds nothing to the third period, which gives permission to accumulate during the minority of a person *in esse* at the death of the testator, and it might have been left out altogether.<sup>8</sup>

§ 144. The construction put upon the statute by the judgments or rather *dicta* cited above, has been considered, by Mr. Jarman,<sup>9</sup> to virtually strike out of the Act the clause in question, and to reduce it to a mere saving or reservation of the rule of law, which accumulates the income of minors, or rather the surplus income, after providing for their maintenance, but at the same time to place in considerable peril the accumulating trust ordinarily introduced into the provisions for the maintenance of minors, being persons unborn at the testator's decease, which direct the unapplied surplus income from time to time to be accumulated and added to the principal. And Mr. Hargrave also remarks,<sup>10</sup> that the cases cited above must be overruled before the provisions, so common in English wills and settlements, for accumulating the surplus income of gifts to children not *in esse* at the death of the testator, and taking no interest in the fund unless or until they attain twenty-one years of age, can

<sup>1</sup> 4 Mad. 275.<sup>2</sup> 9 Ves. 127.<sup>3</sup> 12 Ves. 295.<sup>4</sup> 3 Beav. 587.<sup>5</sup> Jarman on Wills (4th ed.), 305.<sup>6</sup> 4 Mad. 275.<sup>7</sup> See Gray on Perp. § 699.<sup>8</sup> See opinion of Lord Langdale, M. R., in *Ellis v. Maxwell*, 3 Beav. 587.<sup>9</sup> Jarman on Wills (4th ed.), 305, 306.<sup>10</sup> Harg. Thel. Act, § 107.



he depended on, beyond twenty-one years from the death of the settlor or testator.

§ 145. But the better opinion seems to be that the decisions in *Haley v. Bannister*<sup>1</sup> and *Ellis v. Maxwell*<sup>2</sup> only went so far as to decide that the fourth clause of the Thellusson Act does not permit accumulation during the period before the birth of a person unborn at the death of the testator. Whether this clause of the Act would authorize an accumulation beginning at the birth of a person unborn at the death of the testator to continue until he attains twenty-one years of age is, nevertheless, still doubted and undecided.<sup>3</sup> However "the text writers," says Mr. Gray,<sup>4</sup> "generally incline to the opinion that provisions for accumulation which do not violate the rule against perpetuities are good if they begin with the birth of an unborn child, and end at his coming of age."<sup>5</sup>

§ 146. In *Griffiths v. Vere*,<sup>6</sup> Lord Eldon mentions a class of cases in which a trust for accumulation may continue under the Thellusson Act, for a much longer period than twenty-one years. "For instance," says Lord Eldon, "suppose a testator, having an infant son a year old and a brother, has expressly directed accumulation for twenty-one years, and subject thereto has given the estate to his eldest son; and after the decease of his eldest son, to the eldest son of his brother. Suppose the will contained a direction that the property so accumulated, under a direction admitted to be legal, should go to the person who, under those limitations was to take the estates; it is clear that, though the direction to accumulate is only for twenty-one years, yet, under the combined effect of the direction and the law, there might be an accumulation for forty years; for, if the son lived till just about the end of the first twenty years and then died, and the brother had a son a week old, and by his will he had provided a maintenance for his own son, under the direction of the law the income of the property must, during the minority of that son, accumulate in the Court of Chancery."

## 2. *The period during which accumulation is permitted under the Pennsylvania Statute.*

§ 147. The statute of April 18th, 1853, § 9, provides, that no person or persons shall, after the passage thereof, by any deed, will or otherwise, settle or dispose of any real estate or personal property, so and in such manner that the rents, issues and profits thereof shall be wholly or partially accumulated for any longer time than

<sup>1</sup> 4 Mad. 275.

<sup>2</sup> 3 Beav. 587.

<sup>3</sup> *Bryan v. Collins*, 16 Beav. 14. See *Peard v. Kekewich*, 15 Beav. 166.

<sup>4</sup> *Gray on Perp.* § 699.

<sup>5</sup> 1 *Jarm. Wills* (4th ed.). 304, *et seq.*; 3 *Dev. Prec. Conv.* (3rd ed.) 178 note, 469 note; *Marsden Perp.* 337, 338; *Harg. Thel. Act*, §§ 95-107. See *Wilson v. Wilson*, 1 *Sim. N. S.* 288; *Sidney v. Wilmer*, 4 *De G. J. & S.* 84.

<sup>6</sup> 9 *Ves.* 136.

the life or lives of such grantor or grantors, settlor or settlors, or testator, and the term of twenty-one years from the death of any such grantor or testator, "that is to say, only after such decease during the minority or respective minorities, with allowance for the period of gestation, of any person or persons, who, under the uses or trusts of the deed, will or other assurance, directing such accumulation, would, for the time being, if of full age, be entitled unto the rents, issues, interests and profits so directed to accumulate."

§ 148. By comparing the Pennsylvania Statute with the Thellusson Act, it will be observed that the framers of the Pennsylvania Statute have almost made a literal transcript of the first, second and fourth clauses of the Thellusson Act, which constitute the respective periods during which accumulation is allowed by that Act, but they have carefully avoided the third clause. But these distinct clauses, which in the Thellusson Act stand alone and must be taken separately as the limit chosen by the settlor or testator (two or more periods never being permitted to be combined<sup>1</sup>) have been so connected in the Pennsylvania Statute by means of the explanatory words, "that is to say" as to form one complete clause, indivisible and inseparable and which, when taken as a whole, constitutes the period which, at present, is the sole boundary in Pennsylvania to the duration of all directions to accumulate.

§ 149. In Washington's Estate,<sup>2</sup> the force and effect of the words, "that is to say," was carefully considered by Judge Paxson, who decided that they were used merely to explain and qualify the meaning of the clause immediately preceding them, and that the clause that follows should be so connected with this preceding clause as to form one complete clause which was to be construed as a whole with the following effect. That accumulation is limited to the special minority, with allowance for the period of gestation "of any person or persons, who, under the uses or trusts of the deed, will or other assurance, directing such accumulation, would, for the time being, if of full age, be entitled unto the rents, issues, interests and profits so directed to accumulate." That is to say, nothing can be accumulated but income belonging to the minor and which he would be entitled to receive presently, but for the legal impediment of his minority. "Accumulation can only take place but for one class of persons," says Gordon, J.,<sup>3</sup> "who are required to have two essential qualifications.<sup>1</sup> They must be minors.<sup>2</sup> They must be such minors, who, if it were not for their minority, would be entitled to take the rents and profits from which the accumulations are to arise when the gift or grant goes into effect, though at that time they have passed their minority." And again, he says<sup>4</sup> "there should be no accumulation of a decedent's estate except in favor of these minors

<sup>1</sup> See § 136, *ante*.

<sup>2</sup> 8 Phila. 182, S. C. 25 P. F. Smith, 102.

<sup>3</sup> McKee's Appeal, 15 Norris, 277.

<sup>4</sup> Penna. Co.'s App. 25 Smith, 102.

who should be beneficiaries under the deed or will by which the trust should be raised." Therefore income cannot be accumulated during the minority of any minor, unless that minor would be entitled to the income if of full age.

§ 150. The first case that has arisen upon the construction of the Pennsylvania Statute is the leading case of *Washington Estate*.<sup>1</sup> Here a testator created a trust for a minor child, to whom an annual allowance was to be made, and the surplus of the estate, after certain annuities and other minor charges upon the estate had been satisfied, was directed by the testator to be accumulated during the minority of the said minor, "for the benefit of his (the testator's) estate," with which it was ordered to be capitalized. Upon the arrival at full age of the said minor, the testator ordered the said excess, beyond the annuities above referred to, to be given to the said minor, a daughter and only child of the testator, for her sole and separate estate during her life, and after her death, to her children, or if she should leave no children, then to the testator's next of kin. This case arose upon a petition to the Orphans Court of Philadelphia by the guardian of testator's daughter for an additional allowance for her support and education. The trustees of the estate, appointed by the testator, although conceding that the additional allowance was a reasonable demand, nevertheless, alleged that under the nature of the trust there was no estate out of which the additional allowance could lawfully be made, because by the directions of the will they, the trustees, were ordered to accumulate all surplusage during the minority of the daughter, who was then only eighteen years old, for the benefit of the general estate in which she ultimately had only a life estate. But it was held that the direction to accumulate during the minority of the testator's daughter was transgressive of the provisions of the Act of 1853, and therefore void, because the accumulations were not given to the daughter absolutely when she arrived at full age, but that only the interest of such capitalized accumulations were given to her as part of the general estate for her sole and separate use during her life and that the direction to accumulate the surplus income for any other use than that of the absolute use of the legatee was void under the statute. It was also decided that the daughter was entitled to accumulations by virtue of the present gift in possession for she was the person to whom the released income would have gone had there been no direction to accumulate.<sup>2</sup> Consequently, there was an ample fund out of which to decree an additional allowance, which was forthwith granted.

§ 151. Under the third clause of the Thellusson Act accumulation can continue during the minority of a minor who is a stranger to the fund, and a settlor or testator may select the minority of any person *in esse* at his own decease merely as a measure of the dura-

<sup>1</sup> 8 Phila. 182, S. C., 25 P. F. Smith, 102.

<sup>2</sup> See § 166, *post*.

tion of the trust.<sup>1</sup> But under the Pennsylvania Statute, although the minority of a person may be the measure of the duration of the accumulation, nevertheless, the minority chosen must be the minority of a person who would, if of full age, be entitled to the income directed to be accumulated, for the Act permits no accumulation during any minority, except of a person who would be entitled to the fund when he comes of age, at which time the Act intends that the principal of the capitalized accumulations shall be paid to him or the direction to accumulate to become void. The test is, would the minor, if of full age, during the time the accumulations are accruing, be entitled unto them? That is to say, are the accumulations the minor's property, minority being the sole obstacle to his present enjoyment of them? Consequently a direction to accumulate and to add the accumulations to the principal of the fund during any period of the life of a life tenant, is bad altogether.<sup>2</sup> Mr. Gray, when commenting upon this construction of the statute, remarks:<sup>3</sup> "Suppose property is given in trust to pay the income to A. for life, and on A.'s death to transfer the principal to B., and there is a direction to accumulate the income during A.'s minority, and to add the accumulations to the principal. Such a direction would certainly appear to be authorized by the statute. If A. were of full age, he would be entitled to the income; and that is enough, according to the statute, to make the accumulation lawful. If A. would get the income if over age, accumulations made while he is under age ought to be good, to whomsoever they go, for there is nothing in the Statute requiring them to go to A. or any other person. Nevertheless, it has been held that such a direction is void altogether, and however little such a doctrine is justified by the Statute, it is now settled."

§ 152. In Washington's Estate,<sup>4</sup> the question arose as to what amount of interest must a beneficiary, under the will or deed by which the trust is raised, have, in order to be considered as a minor whose minority could validly become the measure of the duration of the accumulation. He must be one, "who, under the uses or trusts of the deed, will, or other assurance directing such accumulation, would, for the time being, if of full age, be entitled unto the rents, issues, interests and profits so directed to accumulate." What, therefore, is the extent of the beneficial interest which such a minor must have in the final accumulated fund when he arrives at his majority? Is a mere nominal limited interest in the accumulated fund sufficient? In Washington's Estate, there was a doubt as to whether the minor daughter of the testator, having by the words of the will a final beneficial interest in the accumulated fund to the extent of a life estate to her sole and separate use, with re-

<sup>1</sup> See § 139, *ante*.

<sup>2</sup> Matter of Sergeant, 11 Phila. 8, see § 120, *ante*.

<sup>3</sup> Gray on Perp. § 717.

<sup>4</sup> 8 Phila. 182; S. C. 25 P. F. Smith, 102.

mainder to her children, had a sufficient beneficial interest in the ultimate accumulated fund to be considered a minor whose minority could, validly within the Act, become the measure of the direction to accumulate. The Court decided that she could not. It is only in the case of a minor, who is entitled to the fund solely, that is, the right to have the principal paid to him at his majority, or when, in connection with other legatees, is entitled to a proportionate share in the fund, that the Act of 1853 permits accumulation to take place, or, in other words, only in those cases where the accumulated fund is for the sole and unconditional benefit of one or more minors, if they live until twenty-one, and who will continue such minors, if they live, until the accumulation ceases. For, if it were otherwise, if the beneficial interest in the accumulated fund could be merely nominal, it follows that the interest might be so small as virtually to amount to nothing, and the toleration of such an evasion would defeat the aim and object of the Statute. Consequently, if the beneficial interest of the minor amounts to nothing at all, we have the same measure of the duration of accumulation in Pennsylvania as is allowed under the third period of the Thelluson Act, namely: accumulation continuing during the minority of a person who is a stranger to the fund and a distribution of the aggregate accumulated fund according to the directions of the deed or will creating the trust, at the expiration of such minority, and this, without any regard whatever to the person during whose minority it was accumulated; a construction directly contrary to the Pennsylvania Statute, which expressly excludes the third clause of the Thelluson Act from its provisions.

§ 153. In *Furness Minor's Estate*,<sup>1</sup> Penrose, J., says, "It is far from clear that the Act contemplated an accumulation through a succession of minorities; certainly a trust for this purpose which might last, as in the case of the youngest of the present minors, for more than twenty-one years after the expiration of a life or lives in being at the death of the testator, would transgress not only the Act of Assembly, but would be void as creating a perpetuity. But if it be conceded that the minority referred to in the Act is not one in actual existence or incipency at the death of the testator, and that accumulation for a series of minors is, during twenty-one years from the testator's death, permissible, it is a necessary corollary of the decision in *Washington's Estate*,<sup>2</sup> that the accumulations during each minority belong to that particular minor."

§ 154. Such are the statutory limits for accumulation imposed by the Thelluson Act and the Pennsylvania Statute of 1853, and such are the essential differences between the two Acts, the failure to recognize which, has perhaps caused, much of the diversity of opinion as regards the proper construction of the latter statute.

§ 155. The construction placed upon the Act of 1853 in Wash-

---

<sup>1</sup> 14 W. N. C. 391.

<sup>2</sup> 8 Phila. 182. S. C. 25 P. F. Smith, 102.

ington's Estate,<sup>1</sup> and which has since been followed by many decisions to the same effect,<sup>2</sup> is undoubtedly a strict construction, confining within very narrow limits the duration of all trusts for accumulation in Pennsylvania. Perhaps it is to be regretted that the language of the Pennsylvania Statute is so sweeping in its terms, for, says Paxson, J., in *Washington's Estate*,<sup>3</sup> "it is difficult to see the wisdom of any Act which requires in a large estate, the accumulated income of a minor to be paid to him upon his arrival at full age. There are many instances where such a thing would be injurious to him in the highest degree. The capitalization of the income and the payment to him of only the interest after majority, would often promote his best good. There would seem to be no reason of public policy demanding such a change in the right of disposing of property. And I desire to call the attention of the profession to the fact that our Act does not, as the Thellusson Act does, allow accumulation for the purpose of the payment of debts or to provide for raising portions for children." It would seem also, that, in such cases, the same policy of the law which favors accumulation during minority, should have repelled the idea of the compulsory subjection of such accumulations to the free control of the minor when just of age. However the courts have considered the Legislature to have judged differently and to have proceeded upon the principle that at twenty-one most persons are capable of managing their own affairs, even to the capacity of choosing between an accumulation and an expenditure of their income. At any rate, says Trunkley, J., in *Carson's Appeal*,<sup>4</sup> "Time enough has elapsed for legislative correction if the intentment of the Statute has been misapprehended by the Courts."

---

<sup>1</sup> 8 Phila. 182. S. C. 25 P. F. Smith, 102.

<sup>2</sup> *Stille's Appeal*, 4 W. N. C. 42, affirming S. C. 11 Phila. 31; 1 W. N. C. 249, *Howell's Estate*, 5 W. N. C. 430; *Sergeant's Estate*, 32 Leg. Int. 29; *McKee's App.* 15 N. 277; *Carson's App.* 3 Out. 325; *Furness Minor's Estate*, 14 W. N. C. 391; *Grim's Appeal*, 17 W. N. C. 4; *Myers' Estate*, 42, Leg. Int. 5; *Eberley's Appeal*, 17 W. N. C. 1.

<sup>3</sup> 8 Phila. 189.

<sup>4</sup> 3 Out. 325.

## CHAPTER VIII.

### TRANSGRESSIVE TRUSTS FOR ACCUMULATION.

#### 1. *Provisions for accumulation which violate the statutory limits.*

§ 156. A provision for accumulation which violates the rule against perpetuities is void in toto.<sup>1</sup> But a provision for accumulation which is good so far as the rule against perpetuities is concerned, but which transgresses either the Thellusson Act or the Pennsylvania Statute of 1853 is not wholly void, but is void only for the excess beyond the limits allowed by these statutes.<sup>2</sup> And even if there is no express direction for accumulation, but the beneficial enjoyment of property is postponed, it follows, that the statutes are infringed whenever the vesting is postponed beyond the statutory limits, unless there is an express application of the income in the interval; since, a grant of a residuary bequest, to take effect in the future carries with it not only the bulk or corpus of the property, but also the intermediate accumulated income. Mr. Lewis, when commenting upon this rule, considers it a "rule of construction entirely novel" in the decision of questions as to the remoteness of provisions suspending the present enjoyment of property.<sup>3</sup>

§ 157. Under the third clause of the Thellusson Act accumulation can continue during an absolute term of twenty-one years. Trusts for accumulation, therefore, which aim at a duration beyond twenty-one years from the death of the settlor or testator are not wholly void, but are void only for the period during which in the event, they shall be found to exceed that duration. So when accumulation is not directed to commence upon the death of the testator but upon the happening of some subsequent contingency, it, nevertheless, comes within the general rule and ceases at the end of twenty-one years from that event.<sup>4</sup> In Pennsylvania, however,

<sup>1</sup> See § 51 & 92-94, *ante*.

<sup>2</sup> *Griffiths v. Vere*, 9 Ves. 127; *Longdon v. Simson*, 12 Ves. 295; *Crawley v. Crawley*, 7 Sim. 427; *O'Neill v. Lucas*, 2 Keen. 313; *McDonald v. Bryce*, 2 Keen. 276; *Eyre v. Marsden*, 2 Keen. 564, 572, 4 Myl. & Cr. 231; *Shaw v. Rhodes*, 1 Myl. & Cr. 135 *sub. nom.*; *Evans v. Hellier*, 5 Cl. & F. 114; *Ellis v. Maxwell*, 3 Beav. 587, 12 Beav. 104; *Elborne v. Goode*, 14 Sim. 165; *Rosslyn's Trust*, 16 Sim. 391; *Oddie v. Brown*, 4 De G. & J. 179; *Bective v. Hodgson*, 10 H. L. C. 656, 664, 671; *Weatherall v. Thornburgh*, 8 Ch. D. 261; *Harg. Thel. Act*, §§ 111 *et seq.* *Marsden Perp.* 323, 324; *Leake v. Robinson*, 2 Mer. 363, 389, 390; *Brown v. Williamson*, 36 Pa. St. 338; *Butler v. Butler*, 9 Phila. 269; *Conrow's Appeal*, 3 Penny. p. 356, 366.

<sup>3</sup> *Lewis on Perp.* 593.

<sup>4</sup> *Lewis v. Lewis*, 6 Sim. 304; *Webb v. Webb*, 2 Beav. 493.

accumulation can take place only for a certain class of persons and a direction for accumulation must comply with this restriction or else become absolutely void; trusts for accumulation, therefore, which are otherwise perfectly created but aim at a duration beyond minority are void for the excess beyond that limit.

§ 158. In *Brown v. Williamson*,<sup>1</sup> Strong, J., says: "The trust indeed may be transgressive, but even under the Ripon Act (39 & 40 Geo. III. c. 98) in England the excess only, beyond the period allowed for trusts of accumulation is void. They are sustained for the statutory period. Our Act of 1853 was modelled after the Ripon Act, and it avoids only the excess in transgressive trusts."<sup>2</sup>

§ 159. In *McKee's Appeal*,<sup>3</sup> Gordon, J., says: "The extreme period allowed for accumulations by the Act of 1853 is twenty-one years, with the additional allowance of the ordinary time of gestation. Here the time is indefinite, it may be much more than twenty-one years. \* \* \* Had we to deal with time, the Act itself would settle any difficulty arising from the matter, for it avoids only the excess." Consequently a trust for accumulation of income, until a minor attains the age of twenty-eight, becomes void under the Act of 1853 on his attaining majority.<sup>4</sup> And the Act renders invalid a direction by a settlor or testator, that accumulations shall be capitalized and the interest thereon paid to the beneficiary after he has attained majority. Such accumulations belong absolutely to the beneficiary when he comes of age.<sup>5</sup>

§ 160. Finally it may be remarked that, by the operation of this nullifying clause of the statutes, the settlor's or testator's intention and disposition is not affected, beyond a mere nullification of the direction for accumulation during the illegal period and for that time only, in all other respects the trust remains unaltered by the statutes. Thus, in *Pride v. Fooks*,<sup>6</sup> there was a direction to accumulate income with a discretionary power to apply any part of the income towards the maintenance of testator's children, to whom was bequeathed the fund and its accumulations. It was held that the power of maintenance continued after the period for accumulation limited by the Thellusson Act had expired. Lord Longdale said: "It does not appear to me that by the expiration of twenty-one years, there has ceased to be any subject for the power to operate upon. The Act, which prevents accumulation, applies only to that which was meant to be accumulated, that is, to the residue after the purposes, which continue lawful, are answered; not to anything which it was within the duty or legal competence of the trustee to

<sup>1</sup> 12 Casey, 338. In this case the direction to accumulate was only an incident to the general trust. See this case criticised in Gray on Perp. § 717, note, and see Grim's Est. 12 W. N. C. 354.

<sup>2</sup> See also Myer's Estate, 42 Leg. Int. 5.

<sup>3</sup> 15 Norris. 277.

<sup>4</sup> *Butler v. Butler*, 9 Phila. 269.

<sup>5</sup> *Carson's Appeal*, 3 Out. 325.

<sup>6</sup> 2 Beav. 430.



do, as against the accumulation, if the accumulation had been allowed to proceed. A great difference is, indeed, affected in the parties interested to oppose any application of the income which would otherwise have accumulated, but no difference in the power or duty to apply the income in a mode directed by the will, which continues lawful."<sup>1</sup> And again in *Eyre v. Marsden*,<sup>2</sup> Longdale, J., says, "The Statute, as it appears to me, was not intended to operate, and does not operate to alter any disposition made by the testator, except his direction to accumulate. Striking that out, everything else is left as before, and all other directions of the will, as to the time of payment, substitution, or any contingencies, are to take effect according to the true construction of the instrument, unaltered by the effect of the Statute."

## 2. *Destination of excessive and released accumulation.*

§ 161. An important question under both the Thellusson Act and the Pennsylvania Act of 1853 is to determine the destination of "the rents, issues, profits and produce," which the settlor or testator has directed to be accumulated, but which are not permitted to be accumulated under the Statutes. Both Statutes provide, that they shall "go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed." This direction is, to a certain extent, simply declaratory of what the law would have been had not such a declaration been inserted; for the mere nullification, on any account, of an excessive direction to accumulate beyond the limits allowed by the law, would, of itself, have entitled the same person or persons to the income released from accumulation, as at present become entitled under the Statutes.<sup>3</sup> When speaking of the Thellusson Act, Lord Eldon said, "The object of those who introduced this bill, was simply to declare these limitations void, and to make the rents and profits go, not to those claiming by the disposition, but (by the effect of the act striking out the direction for accumulation) to those who would have been entitled in cases of intestacy." But besides this title, which would have been given at law, there is another title which depends for its validity entirely upon the direction given in the Statutes. And Lord Cottenham says, "the title of the heir at law, or next of kin rests altogether upon the right to property undisposed of; but the Act against accumulations gives a statutable title."

<sup>1</sup> See *Ellis v. Maxwell*, 3 Beav. 587. For cases where the power of making allowances for maintenance in cases of devises or legacies to a class of infants, should continue, either in accordance with a direction by the settlor or testator or under order of the Court, after the period for accumulation limited by the fourth clause of the Thellusson Act has expired, see *Harg. Thel. Act*, §§ 124, 125.

<sup>2</sup> 2 Keen, 574.

<sup>3</sup> *Harg. Thel. Act*, § 127; 1 *Perry on Trusts*, § 397.

§ 162. The effect of the Statutes is not to accelerate the enjoyment of property or any gifts or subsequent limitations in the will.<sup>1</sup> Thus the Statutes do not accelerate interests in remainder, for if there be a series of limitations of real estate, the limitations subsequent to the one in connection with which there is an illegal direction for accumulation, are not accelerated. So, "when a fund is given upon trust to pay certain annuities out of the income and to accumulate the rest, and the fund and accumulations are given after the death of the annuitants to a legatee absolutely, the legatee is not entitled to stop the accumulations during the lives of the annuitants, and to ask for payment of the fund after providing for the annuities. So far as the accumulation extends beyond the statutory period the income is undisposed of and goes to the heir-at-law or next of kin."<sup>2</sup> It is, however, the necessary effect of the Statutes to accelerate the time of payment where the legacy is a vested interest and the excess of accumulation, beyond the period of the statutory limit, is declared void.<sup>3</sup>

§ 163. The cases which determine the destination of the income released, by the Statutes, from accumulation, may be divided into four classes.

§ 164. *First.* If there is a present gift in possession, given absolutely in the first place, and a trust for accumulation, either of the rents, issues and profits arising out of real estate, or of the income arising out of the fund, is engrafted upon this vested interest by being either charged on the real estate, or carved out of the fund, and thus diminishing the beneficial interest of the devisees or legatees, by governing the mode of enjoyment; then, the rents and profits, or the income released, by the statutes, from accumulation, go to the persons to whom the absolute estate or vested interest is given, who are the persons who would have taken it had there been no direction to accumulate.<sup>4</sup>

§ 165. The reason for the above rule is, that such devisees or legatees would have had all the rents and profits or all the income,

<sup>1</sup> *Eyre v Marsden*, 2 Keen. 564, 574; *Nettleton v. Stephenson*, 3 De G. & Sm. 366; *Green v. Gascoyne*, 4 De G. J. & S. 565; *Talbot v. Jevers*, 20 Eq. 255; *Weatherall v. Thornburgh*, 8 Ch. D. 261; *Edwards v. Tuck*, 3 De G. M. & G. 40; *Re Drakeley's Trust*, 19 Beav. 395; *Smith v. Lomas* 10 Jur. N. S. 743; *Mitcheson's Estate*, 11 W. N. C. 548.

<sup>2</sup> *Theobald on Wills* (2nd Ed.), 447; See *Talbot v. Jevers*, 20 Eq. 255; *Weatherall v. Thornburgh*, 8 Ch. D. 261; *Mitcheson's Estate*, 11 W. N. C. 548; *Grim's Estate*, 12 W. N. C. 354. In these cases acceleration is excluded by the intention of the testator expressed in the will itself.

<sup>3</sup> *Myers' Estate*, 42 Leg. Int. 5.

<sup>4</sup> *Trickey v. Trickey*, 3 Myl. & K. 560, 565; *Clulow's Trust*, 1 J. & H. 639; *Coombe v. Hughes*, 34 Beav. 127. 2 De G. J. & S. 657; *Ogilvie v. Kirk Session of Dundee*, 8 D. 1229; *Mackenzie v. Mackenzie*, 4 R. 962; *Maxwell v. Maxwell*, 5 R. 248; *Smyth v. Kinloch*, 7 R. 1176; 1 *Jarm Wills* (4th Ed.), 311; *Washington's Estate*, 75 Pa. St. 102; *Stille's Appeal*, 4 W. N. C. 42; *Carson's Appeal*, 99 Pa. St. 325; *Matter of Sergeant*, 11 Phila. 8; *Howells Estate*, 5 W. N. C. 430; *Penrose Appeal*, 6 Out. 448; *Phila v. Girard*, 45 Pa. St. 9; *Furness Minor's Estate*, 14 W. N. C. 391; *Potters Estate*, 36 Leg. Int. 461.

if the will had not directed accumulation. They therefore take the accumulations just as they would the corpus of the estates.

§ 166. In *Washington's Estate*,<sup>1</sup> a testator allowed an annual sum out of the income of his estate for the use of a minor child, and directed "the balance of such income to be accumulated during the minority of my said daughter, for the benefit of my estate," and that after she attained full age, the income of his estate should be paid to his daughter. Here it was held, that the direction to accumulate was void under the Act of 1853, and that the daughter was entitled to the accumulations by virtue of her present gift in possession, for she was the person to whom the released income would have gone had there been no direction to accumulate.

§ 167. Again in *Stille's Appeal*,<sup>2</sup> a testatrix devised one-fifth part of her residuary estate to trustees for the benefit of two granddaughters, the income from which was to be accumulated until their majority or marriage, and then the portion with the accumulations was to be held as a trust fund for their sole and separate use for life, the income to be paid annually with remainder to their children. It was held, that although the direction to accumulate was void under the statute, yet, as it clearly appeared that the testatrix did not intend to die intestate as to any portion of her estate, the bequest of the legacy carried with it to the legatees the right to the accumulations of income. This decision was in conformity with the rule laid down in *Washington's Estate*, "that if a will directed unlawful accumulations, made during the minority of an infant, to be capitalized, and the interest of the capitalized accumulations to be paid to the person, formerly an infant, during life, from and after the attainment of majority, the unlawful accumulations are the property of the minor." But it was contrary to the general rule, by which the undisposed of part of a decedent's personal estate usually went to his next of kin.<sup>3</sup> But, says Dwight, J., in *Stille's Appeal*, "It will be seen that the Act itself does not determine specifically the individual recipients (of the income released by the statute from accumulation). It merely designates them as "those who would have been entitled" to the accruing products, in case the will has been silent respecting their destination. The title must be found, as already mentioned, either in some other clause of the will, or in some statute or rule of law. This will may be searched in vain for such title. We are remitted to a statute or a rule of law." Therefore, in conformity with the rule of law laid down in *Washington's Estate*, it was decided that a specific bequest of the corpus of a legacy carries with it to the legatee the right to all accumulations of income made for his benefit under a direction in a will contrary to the Act.

§ 168. When a present and absolute estate in possession is de-

<sup>1</sup> 75 Pa. St. 102, see § 150, *ante*.

<sup>2</sup> 4 W. N. C. 42.

<sup>3</sup> Smith on Ex. Int. § 741,

vised subject to a trust for accumulation, which is void and which is a mere charge on the land, and not an estate therein, the trust, like any other charge which fails,<sup>1</sup> sinks for the benefit of the persons for the time being entitled to the estate, and the income, released by the Act, from accumulation, goes to the devisees who are the persons entitled to the estate free from the charge.<sup>2</sup>

§ 169. In *Simmons v. Pitt*,<sup>3</sup> however, a testator having power to charge real estate did, by deed, charge them with the payment, after the deaths of himself and his wife, of a certain sum and interest, to trustees upon such trust as he should by his will appoint. By his will he directed that the above sum and interest should form part of his residuary personal estate, and directed the residue to be invested in the purchase of land, of which the trustees were to accumulate the rents in a manner which in part was void under the *Thellusson Act*. It was held that that part of the interest as to which the directions to accumulate were void went to the next of kin of the testator, and did not sink into the estates on which it was charged, or go to his heir.

§ 170. If there is a present gift to one for life, with remainder over, the income, released by the statutes, from accumulation, goes to the tenant for life.<sup>4</sup> And the better opinion seems to be, that, if the fund to be accumulated is not a residue, and the residue is not given absolutely, but is settled on one for life or for a term of years, with remainder over, the income, released by the statutes, from accumulation, belongs to the tenant for life of the residue and does not go to form part of the capital of the residue.<sup>5</sup> But no principle would give void accumulations which had accrued before any interest in a life tenant began, to the life tenant absolutely.<sup>6</sup>

§ 171. The above is the rule when there is a present gift in possession, but when the vesting of a contingent interest,<sup>7</sup> or the possession of a vested interest,<sup>8</sup> is postponed until after the period of accumulation has expired, the statutes, by releasing the income from accumulation, do not, as has been already remarked,<sup>9</sup> accelerate either the vesting or the possession, and the next three classes will

<sup>1</sup> See *Tucker v. Kayess*, 4 K. & J. 339.

<sup>2</sup> *Shaw v. Rhodes*, 1 Myl. & Cr. 135; *sub. nom.* *Evans v. Hellier*, 5 Cl. & F. 114; *Clulow's Trust*, 1 J. & H. 639; *Coombe v. Hughes*, 34 Beav. 121; 2 De G. J. & S. 657.

<sup>3</sup> L. R. 8 Ch. 978.

<sup>4</sup> *Trickey v. Trickey*, 3 Myl. & K. 560, 565; *Coombe v. Hughes*, 34 Beav. 127; 2 De G. J. & S. 657.

<sup>5</sup> *In re Phillips*, *Phillips v. Levy*, L. J. 49 Ch. 198; 28 W. R. 340; *O'Neill v. Lucas*, 2 Keen, 313, 316; *Gray on Perp.* §§ 707, 708; but see *Morgan v. Morgan*, 4 De G. & S. 175, 176, L. J. 21 Ch. 441; *Crawley v. Crawley*, 7 Sim. 427, where it was held that the released income went into the residue of the estate as capital.

<sup>6</sup> *Myers' Estate*, 42 Leg. Int. 5.

<sup>7</sup> *Jones v. Maggs*, 10 Hare, 605.

<sup>8</sup> *Macdonald v. Bryce*, 2 Keen, 276; *Eyre v. Marsden*, 2 Keen, 574; *Ellis v. Maxwell*, 3 Beav. 597; *Nettleton v. Stephenson*, 3 De G. & S. 366; *Barrington v. Liddell*, 10 Hare, 429; *Weatherall v. Thornburgh*, 8 Ch. D. 261.

<sup>9</sup> See § 162, *ante*.

show what becomes of the income in the *interim* until the vesting or possession of the estate is matured.

§ 172. *Second.* In the case of personal property, where the fund to be accumulated is not a residue, the income, released, by the statutes, from accumulation, goes to form part of the capital of the residue and goes to the residuary legatee, or if there is no residuary legatee then to the next of kin. The prohibited accumulations are portions of the estate undisposed of, except by the residuary clause, and therefore must pass under that clause.<sup>1</sup> In *Sergeant's Estate*,<sup>2</sup> Dwight, J., laid down the rule, that "the accumulations raised by a null and void part of a will are necessarily undisposed of by that part, and must come within the operation of the residuary clause, except when by that clause itself such accumulations are directed to be made." Consequently, since the void accumulations in this case were undisposed of, they passed into the residuary estate. In *McKee's Appeal*,<sup>3</sup> the property, the subject of the accumulation, was not a residue and there was a residuary clause in the will, in that case the accumulations went to the residuary legatee.

§ 173. *Third.* In the case of real estate, where the fund to be accumulated is not a residue, the income, released, by the statutes, from accumulation, goes, as in other devises which are void,<sup>4</sup> to the heir, who is entitled at common law, or, if the will is governed by the Wills Act,<sup>5</sup> to the residuary devisee.<sup>6</sup>

§ 174. If the interest of the heir be either a chattel interest, carved out of real estate, or an interest *pur autre vie*, the excess of income beyond the allowed period of accumulation accruing subsequently to his death, will go to his personal representatives; his executor or administrator, and not to his heir.<sup>7</sup>

§ 175. *Fourth.* If the income of a residue is directed to be accumulated, the income, released by the statutes from accumulation, goes to the heir or next-of-kin, according to the nature of the property; the income of the realty going to the heir and the income of

<sup>1</sup> *Ellis v. Maxwell*, 3 Beav. 587; *A. G. v. Poulden*, 3 Hare, 555; *Jones v. Maggs*, 9 Hare, 605; *Crawley v. Crawley*, 7 Sim. 427; *Haley v. Bannister*, 4 Mad. 275; *O'Neill v. Lucas*, 2 Keen, 313; *Webb v. Webb*, 2 Beav. 493; *Re Drakeley's Trust*, 19 Beav. 395; *Hull v. Hull*, 24 N. Y. 647; *Sergeant's Estate*, 32 Leg. Int. 29; *McKee's Appeal*, 15 Norris, 277; *Thouren's Est.*, 11 W. N. C. 286; *Thouren's Appeal*, 18 W. N. C. 56.

<sup>2</sup> 32 Leg. Int. 29.

<sup>3</sup> 15 Norris, 277.

<sup>4</sup> As to void devises in Pennsylvania, see 2 Bright. Purd. Dig. (1885) 1713, pl. 24, and the Act of July 7th, 1885.

<sup>5</sup> 1 Vict. c. 26, § 25.

<sup>6</sup> *Nettleton v. Stephenson*, 3 De G. & Sm. 366; *Eyre v. Marsden*, 2 Keen, 564, 574; *Edwards v. Tuck*, 3 De G. M. & G. 40; *Re Drakeley's Trust*, 19 Beav. 395; S. C. 4 De G. J. & S. 565, 572; *Smith v. Lomas*, 10 Jur. N. S. 743; 33 L. J. Ch. 578; *Talbot v. Jevers*, 20 L. J. Eq. 255; *Sewell v. Denny*, 10 Beav. 315; *Halford v. Stains*, 16 Sim. 488; *Wildes v. Davies*, 1 Sm. & G. 475, 484; *Macdonald v. Bryce*, 2 Keen, 276; *Barrington v. Liddell*, 10 Hare, 429; *Morgan v. Morgan*, 4 De G. & Sim. 175.

<sup>7</sup> *Sewell v. Denny*, 10 Beav. 315; *Barrett v. Buck*, 12 Jur. 771; see *Halford v. Stains*, 16 Sim. 488, 496; *Gray on Perp.* § 702 and note.

the personalty going to the next-of-kin.<sup>1</sup> If the property be mixed, partly real and partly personal, the income, if there is no residuary devisee or legatee, goes to the heir or next-of-kin proportionately.<sup>2</sup> If there is no heir or residuary devisee to take the income of the realty, or no next-of-kin to take the income of the personalty, then the released income goes to the State by escheat.<sup>3</sup>

§ 176. The income of the accumulations of income from personalty, of course, retains its character of personalty, and it would also seem that the income of the accumulations of rents and profits from realty retains its character of realty and is not equitably convertible except for purposes of the will.<sup>4</sup> And the income of the accumulations of income follows the same rules as govern the destination of the income itself.<sup>5</sup>

§ 177. Finally, it may be remarked, that the above rules are substantially the same rules that govern the distribution of released income which is illegally directed to be accumulated at common law.

§ 178. The right of a widow to a share in the accumulations of a fund void under the Act of 1853, depends upon the manner in which the surplus income is distributed by the Court. The distribution depending, as we have shown, to a great extent upon the intention of the testator. It is only in the case of a distribution under the intestate laws, and then only when there are no express words of exclusion in the will, that she is allowed a share of the intestate's effects, provided, however, that she has made her election.<sup>6</sup>

§ 179. In making distribution, the intention of the testator will govern as long as it can be ascertained from the words of the will, and no testator will be presumed to have died intestate as to any part of his estate, if a contrary intention can be fairly deduced from the will.<sup>7</sup>

<sup>1</sup> *Gréen v. Gascoyne*, 4 D. J. & S. 565; *Halford v. Stains*, 16 Sim. 488; *Eyre v. Marsden*, 2 Keen, 564; 4 M. & Cr. 431; *Wildes v. Davies*, 1 Sm. & G. 475; *Ralph v. Carrick*, 5 Ch. D. 984; *McDonald v. Bryce*, 2 Keen, 276; *Pride v. Fooks*, 2 Beav. 430; *Elborne v. Goode*, 14 Sim. 165; *Bourne v. Buckton*, 2 Sim. N. S. 91; *Edwards v. Tuck*, 3 De G. M. & G. 40; *Mathews v. Keble*, 4 L. R. Eq. 467; 3 L. R. Ch. App. 691; *Simmons v. Pitt*, 8 L. R. Ch. App. 978; *Talbot v. Jevers*, 20 L. R. Eq. 255; *Weatherall v. Thornburgh*, 8 Ch. D. 261; *Wilson v. Wilson*, 1 Sim. (N. S.) 288; *Oddie v. Brown*, 4 De G. & J. 179; *Burt v. Sturt*, 10 Hare, 415; *Morgan v. Morgan*, 4 De G. & Sm. 164, 175; *Keith v. Keith*, 19 D. 1040; *Lord v. Colvin*, 23 D. 111; *Pursell v. Elder*, 4 Macq. 992; *Mellon's Estate*, 41 Leg. Int. 54; *Grim's Estate*, 15 Phila. 603, 12 W. N. C. 354, 42 Leg. Int. 464; *Grim's Appeal*, 17 W. N. C. 3; *Mitcheson's Estate*, 15 Phila. 523, 11 W. N. C. 547; *Gowen's Appeal*, 41 Leg. Int. 429.

<sup>2</sup> *Eyre v. Marsden*, 2 Keen, 564, and *Ralph v. Carrick*, 5 Ch. D. 984, 997, 998; see *Talbot v. Jevers*, L. R. 20 Eq. 255.

<sup>3</sup> *Weatherall v. Thornburgh*, 8 Ch. D. 261; *Harbin v. Masterman*, L. R. 12 Eq. 559.

<sup>4</sup> *Eyre v. Marsden*, 2 Keen, 577; *Wood v. Cone*, 7 Paige, 472; 1 Jarman Wills (4th Ed.). 312, 313; *Marsden Perp.* 342; but see *Gray on Perp.* § 706.

<sup>5</sup> *Crawley v. Crawley*, 7 Sim. 427; and *O'Neill v. Lucas*, 2 Keen, 316; *Morgan v. Morgan*, 4 De G. & Sm. 175, L. J. 20, Ch. 441.

<sup>6</sup> *Grims' Appeal*, 17 W. N. C. 4, 12 W. N. C. 354; *Potter's Estate*, 36 Leg. Int. 460.

<sup>7</sup> *Axford's Estate*, 2 W. N. C. 663; *Thouron's Appeal*, 18 W. N. C. 56, 11 W. N. C. 286.

## CHAPTER IX.

### PROVISOS OF THE STATUTES.

#### 1. *Provisos of the Thellusson Act.*

§ 180. The first proviso to the Thellusson Act is embodied in the second section of the Act and by it three classes of provisions are excepted from the application and operation of the Act.

§ 181. *First.* "Any provision for payment of debts of any grantor, settlor or devisor, or other person or persons." It has been held that a trust for accumulation for the purpose of paying off the debts, whether of the testator or settlor himself, or of a stranger, is good.<sup>1</sup> And it makes no difference whether the debts be existing or future debts.<sup>2</sup> But the trust for accumulation must be *bonâ fide* for the unconditional payment of debts and intended as a provision for this purpose only.<sup>3</sup> Therefore, if creditors, availing themselves of their legal rights, get their debts paid out of the corpus, accumulation cannot continue for the purpose of recouping the corpus, even though there is an express direction to that effect.<sup>4</sup>

§ 182. *Second.* "Any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under such conveyance, settlement, or devise." The portions intended by the Act include pre-existing portions,<sup>5</sup> as well as portions created by the deed or will directing the accumulation.<sup>6</sup>

§ 183. What are portions within the exception? Portions must be raised by provisions for accumulating the income of property. And the Act does not protect accumulations which are to be added to the capital for the express purpose and intention of making a gift of the entire accumulated fund when the period for the accumulation has expired.<sup>7</sup> But it has been held, that the gift of a specific

<sup>1</sup> *Barrington v. Liddell*, 2 De G. M. & G. 480; but see 10 Hare, 429; *Varlo v. Faden*, 27 Beav. 255, 264, 1 De G. F. & J. 211, 224; *Mathews v. Keble*, L. R. 3 Ch. 691.

<sup>2</sup> *Varlo v. Faden*, 27 Beav. 255, 264, 1 De G. F. & J. 211.

<sup>3</sup> *Mathews v. Keble*, L. R. 3 Ch. 691, 698, 699, L. R. 4 Eq. 467. See *Varlo v. Faden*, 27 Beav. 255, 265, 1 De G. F. & J. 211, 224, 225; 1 *Jarman Wills* (4th ed.), 307; *Marsden Perp.* 343, 344.

<sup>4</sup> *Tewart v. Lawson*, L. R. 18 Eq. 490.

<sup>5</sup> *Barrington v. Liddell*, 10 Hare, 429, 431; *Middleton v. Losh*, 1 Sm. & G. 61; and see *Burt v. Sturt*, 10 Hare, 415.

<sup>6</sup> *Beech v. Lord St. Vincent*, 3 De G. & S. 678, 3 Jur. N. S. 762. See *Bourne v. Buckton*, 2 Sim. N. S. 91, 96.

<sup>7</sup> *Eyre v. Marsden*, 2 Keen, 564; *Bourne v. Buckton*, 2 Sim. N. S. 91; *Edwards v. Tuck*, 3 De G. M. & G. 40; *Jones v. Maggs*, 9 Hare, 605; *Wildes v. Davies*, 1 Sm. & G. 475; *Watt v. Wood*, 2 Dr. & Sm. 56; *Morgan v. Morgan*, 4

sum to be accumulated for children is a portion within the exception to the Act.<sup>1</sup> The gift of an accumulated fund to the survivors of a class of children when the period for the accumulation has expired is not a portion.<sup>2</sup>

§ 184. A direction to accumulate the rents and profits of an estate up to a certain amount for the purpose of raising portions for children, if there are any, of a devisee, who dies without having had a child, is not within the protection of the Act. When, subject to such a direction, the estate itself is devised to several in succession, the direction to accumulate operates as a charge on the successive estates; and accumulations made after twenty-one years from the death of the testator belong, not to his heir-at-law, but, from time to time, to the several persons entitled to the rents and profits.<sup>3</sup>

§ 185. The gift of a legacy to a parent for life, and after his death to his children, is not a provision for raising portions for children, and a direction to accumulate in connection therewith is not protected by the exception to the Act.<sup>4</sup>

§ 186. In order to allow the accumulation to come within the exception, the children, for whom the portions are to be raised, must be legitimate children;<sup>5</sup> and they must be children either of the settlor or testator himself, or of a person taking an interest under the instrument directing the accumulation.<sup>6</sup>

§ 187. What amount of interest is it necessary for the parent to have? The interest taken by the person in order to validate a provision for accumulation for raising portions for his children, must be a substantial interest in some property under the instrument directing the accumulation, and not a mere nominal interest. But the interest taken by the parent need not be an interest in the fund to be accumulated or in the particular gift which contains the provision for accumulation. It is sufficient if the parent be given any interest, however small or remote, under the instrument.<sup>7</sup> It has been held that when accumulation is directed to raise portions for

De G. & Sm. 175; L. J. 20 Ch. 441; Mathews v. Keble, L. R. 3 Ch. 691, 696, 697, L. R. 4 Eq. 467; Shaw v. Rhodes, 1 Myl. & Cr. 135, 159; *sub nom.* Evans v. Hellier, 5 Cl. & F. 114.

<sup>1</sup> Middleton v. Losh, 1 Sm. & G. 61; St. Paul v. Heath, 13 L. T. N. S. 271; see 1 Jarm. on Wills (4th ed.) 309, 310; Gray on Perp., § 711; but see Jones v. Maggs, 9 Hare, 605; Morgan v. Morgan, 4 De G. & Sm. 164, 170, *et seq.*; Burt v. Sturt, 10 Hare, 415; Watt v. Wood, 2 Dr. & Sm. 56; Theob. Wills (2nd ed.), 446; Harg. Thel. Act, §§ 153, *et seq.*; Marsden Perp. 345, 346; Tud. L. C. in Real Prop. (3rd ed.) 515-517.

<sup>2</sup> Burt v. Sturt, 10 Hare, 415; Drewett v. Pollard, 27 Beav. 196.

<sup>3</sup> *In re Clulow's Trust*, 1 J. & H. 639.

<sup>4</sup> Watt v. Wood, 2 Dr. & Sm. 56.

<sup>5</sup> Shaw v. Rhodes, 1 Myl. & Cr. 135, 159.

<sup>6</sup> Eyre v. Marsden, 2 Keen, 564.

<sup>7</sup> Evans v. Hellier, 5 Cl. & F. 114, 126, 127; Barrington v. Liddell, 2 De G. M. & G. 480; Edwards v. Tuck, 3 De G. M. & G. 40, 63; Bourne v. Buckton, 2 Sim. N. S. 91, 101; Morgan v. Morgan, 4 De G. & Sm. 164, 174; Burt v. Sturt, 10 Hare, 423.



a class of children some of whom have different parents, if any parent takes no interest under the instrument directing the accumulation, the whole direction is void.<sup>1</sup>

§ 188. *Third.* "Any direction touching the produce of timber or wood upon any lands or tenements."<sup>2</sup>

§ 189. II. The third section of the Thellusson Act is as follows: "Provided also, and be it enacted, That nothing in this Act contained shall extend to any disposition respecting heritable property within that part of Great Britain called Scotland."<sup>3</sup> In 1848, by St. 11 & 12 Vict. c. 36, § 41, this section of the Act was repealed, and it was declared that the Act "shall in future apply to heritable property in Scotland."<sup>4</sup>

§ 190. III. The fourth section of the Thellusson Act reads as follows: "Provided also, and be it enacted, That the restrictions in this Act contained shall take effect and be in force with respect to wills and testaments made and executed before the passing of this Act, in such cases only where the deviser or testator shall be living, and of sound and disposing mind, after the expiration of twelve calendar months from the passing of this Act."<sup>5</sup>

## 2. *Provisos of the Pennsylvania Statute.*

§ 191. I. "*Provided*, That any donation, bequest, or devise for any literary, scientific, charitable, or religious purpose, shall not come within the prohibition of this section, which shall take effect and be in force, as well in respect to wills heretofore made by persons yet living and of competent mind, as in respect to wills hereafter to be made."<sup>6</sup> This clause of the Pennsylvania Statute expressly excludes from its operation accumulations for charitable purposes.<sup>7</sup> But a direction to accumulate is not excepted from the operation of the act because the accumulations are for the contingent benefit of a charity.<sup>8</sup> The intention of the testator shall always govern, whenever that intention is clearly manifested and is not in conflict with established principles of law. If, therefore, accumulation in favor of a charity would take place, if the intention of the testator was carried out, such a direction to accumulate must

<sup>1</sup> *Eyre v. Marsden*, 2 Keen, 564, 573.

<sup>2</sup> *Harg. Thel. Act*, §§ 163, *et seq.*; *Marsden Perp.* 346, 347.

<sup>3</sup> *Ogilvie v. Kirk* Session of Dundee, 8 D. 1229.

<sup>4</sup> *Keith v. Keith*, 19 D. 1040; *McLarty v. McLaverty*, 2 Macph. 489. The Thellusson Act does not extend to Ireland, but it is said to be in force in Victoria. *Hastie v. Arsdie*, 6 W. W. & A'B. Eq. 91; *Gray on Perp.* § 714.

<sup>5</sup> *Harg. Thel. Act*, §§ 171-173. On the question of costs in suits involving the application of the Thellusson Act, see *Eyre v. Marsden*, 4 Myl. & Cr. 231, (reversing *S. C.* 2 Keen, 564); *Barrett v. Buck*, 12 Jur. 771; *Elborne v. Goode*, 14 Sim. 165, 178; *Ralph v. Carrick*, 5 Ch. D. 984, 998; *Green v. Gascoyne*, 4 De G. J. & S. 565.

<sup>6</sup> On this last clause see § 190, *ante*.

<sup>7</sup> *Curran v. Phila. Trust Co.*, 15 Phila. 84.

<sup>8</sup> See *De Renne's Estate*, 12 W. N. C. 94.

be inferred.<sup>1</sup> But a charitable trust which contains a clause for an illegal accumulation is not void in toto, the Court will administer it in accordance with the law.<sup>2</sup>

§ 192. II. "*And provided*, That notwithstanding any direction to accumulate rents, issues, interest and profits, for the benefit of any minor or minors, it shall be lawful for the proper court as aforesaid, on the application of the guardian, where there shall be no other means for maintenance or education, to decree an adequate allowance for such purpose, but in such manner as to make an equal distribution among those having equal rights or expectancies, whether at the time being minors or of lawful age.<sup>3</sup> Three questions arise in connection with this clause of the Pennsylvania Statute. *First*. When can an allowance be made? *Second*. Out of what fund must the allowance be made? And *Third*. For whom must the allowance be made? It is only when the accumulations are ultimately to belong to the minor that the Court is permitted to decree an allowance. For if the testator could give the accumulations to a stranger or place them in trust for the minor with a limitation over, it would be beyond the power of the Court to decree an allowance out of such accumulations. Therefore, it is only when the accumulations are to go to the minor, that an allowance can be made thereout, and as regards the cases in which the accumulations are not for the minor's benefit, the act is silent.<sup>4</sup>

§ 193. In *Stille's Estate*,<sup>5</sup> Dwight, J., says, "It has been argued before us, that, if it is admitted that the accumulations are void, they must, nevertheless, be awarded to the minor by force of the proviso, (the one now under consideration) \* \* \* \* \*, because if the accumulations do not go to the minor, there is no fund out of which an adequate allowance can be decreed. It might be said, that if it were admitted that the void accumulations do not go to the minor, the act might receive a consistent interpretation. The legislature, by the act, has undertaken to distribute part of a decedent's estate, because unlawfully accumulated, and to say to whom it shall go. It can certainly qualify the grant which it has the power to make, and can say that if a minor is in distress, the Court may take part of the void accumulations for the minor, and the parties contemplated by the act take the rest. In other words, it can turn a rill from the stream of its bounty towards a child in need. But we think the true intention of the proviso is to qualify the will's direction to accumulate, not the legislature's direction to

<sup>1</sup> *Biddle's Estate*, 3 Out. 525, reversing *Derbyshire's Estate*, 11 W. N. C. 22.

<sup>2</sup> *Curran v. Phila. Trust Co.*, 15 Phila. 84. By the Statute of April 26th, 1855, § 12 (1 Bright. Pud. Dig. (1885) 251, pl. 25), charitable corporations and associations are restricted in the accumulation of the income of their property.

<sup>3</sup> The Thellusson Act makes no provision for the allowance of maintenance out of accumulations; consequently the rules of the common law govern. See §§ 81-84, 160, n. *ante*.

<sup>4</sup> *Washington's Estate*, 8 Phila. 187; 75 Pa. St. 102.

<sup>5</sup> 32 Leg. Int. 74; 11 Phila. 31.

scatter abroad. The will may lawfully direct accumulation of the entire income, or the larger part thereof, during some minorities, and not provide a sufficient maintenance for the infant; but, it may do this, provided, notwithstanding such direction to accumulate for the benefit of the minor, that it shall be lawful for the proper court to divert the accumulations to present necessities, when they are the last resource, 'when there shall be no other means for maintenance and education,' is the expression of the proviso. No other means than what? The unlawful accumulations or the lawful? Clearly the meaning is, that the lawful accumulations, which must be the property of the minor in order to be lawful, shall not continue to accrue during minority, unless the infant has other means of support; but if the infant has no property sufficient to maintain him, except *his* property in the form of the accumulations, the Court may order an allowance out of the latter."

§ 194. Where there is a provision that the fund with its accumulations shall go to the children of minor grandchildren dying in their minority, the grandchildren are nevertheless entitled to a proper allowance out of the fund, and the rights of subsequent takers are subordinate to this provision.<sup>1</sup> "It would be going very far to so construe this general word 'any' (in the proviso) as to exclude from the benefit of the provision for maintenance, minors having a present interest, in order to preserve it for persons unborn and unlikely to be born."<sup>2</sup>

<sup>1</sup> *Furness Minor's Estate*, 14 W. N. C. 391.

<sup>2</sup> *Per Penrose, J.*, in *Furness Minor's Estate*, 14 W. N. C. 391. On the conflict of laws on the subject of the Thellusson Act and the Act of 1853, see *Fordyce v. Bridges*, 2 Phil. 497, 515; *Macpherson v. Stewart*, 28 L. J. Ch. 177, 32 L. T. 143; *Freke v. Carbery*, L. R. 16 Eq. 461; *Ellis v. Maxwell*, 12 Beav. 104; *Heywood v. Heywood*, 29 Beav. 9.; *Gray on Perp.* §§ 259-267; *Estate of Mellon*, 41 Leg. Int. 54; *De Renne's Estate*, 12 W. N. C. 94. And on the question of charges of compound interest against trustees for accumulation for neglecting to comply with directions to accumulate, see *Raphael v. Boehm*, 11 Ves. 92; *Brown v. Sancome*, 1 M. Cl. & Y. 427; *Harland's Accounts*, 5 Rawle, 329; *Luken's Appeal*, 7 W. & S. 48; *Hirghington v. Grant*, 5 M. & C. 258; *Dornford v. Dornford*, 12 Ves. 127; *Knott v. Cotter*, 16 Beav. 77; *Pride v. Fooks*, 2 Beav. 430; *Wilson v. Peake*, 3 Jur. N. S. 155; *Re Emmet's Estate*, 17 Ch. D. 142; *Byrchall v. Bradford*, 6 Mad. 13 S. C. Id. 235; *Byrne v. Norcott*, 13 Beav. 336; *Stackpole v. Stackpole*, 4 Dow. P. C. 209; *Karr v. Karr*, 6 Dana. 3; *Bowles v. Drayton*, 1 Des. 489; *Hodge v. Hawkins*, 1 Dev. & Bat. 564; *Lesley v. Lesley*, 1 Dev. 117; *Fitham v. Turner*, 23 L. T. (N. S.) 345; *Court v. Robarts*, 6 Cl. & Fin. 64; *Townsend v. Townsend*, 1 Gif. 201; *Latimer v. Hansom*, 1 Bland. 51; *Winder v. Diffenderffer*, 2 Bland. 166; *McKnight v. Walsh*, 23 N. J. Eq. 136, 24 N. J. Eq. 498; *Lathrop v. Smalley*, 23 N. J. Eq. 192; *Blogg v. Johnson*, L. R. 2 Ch. 225.

## CHAPTER X.

### ACCUMULATION IN OTHER STATES.

§ 195. *New York.* By the Revised Statutes of 1828,<sup>1</sup> accumulations are restrained. The text of the statutes is given in a note.<sup>2</sup>

<sup>1</sup> Rev. Sts. pt. 2. C. 1. tit. 2, §§ 37-40 ; Rev. Sts. pt. 2. C. 4. tit. 4, §§ 3-5.

<sup>2</sup> Rev. Sts. pt. 2. C. 1. tit. 2.

“ § 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed, sufficient to pass real estate, as follows :

“ 1. If such accumulation be directed to commence on the creation of the estate, out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority :

“ 2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this article permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

“ § 38. If, in either of the cases mentioned in the last section, the direction for such accumulation shall be for a longer term than during the minority of the persons intended to be benefited thereby, it shall be void as respects the time beyond such minority. And all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

“ § 39. Where such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

“ § 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which, the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.”

Rev. Sts. pt. 2. c. 4. tit. 4.

“ § 3. An accumulation of the interest money, the produce of stock or other income or profits arising from personal property, may be directed by any instrument sufficient in law to pass such personal property as follows :

“ 1. If the accumulation be directed to commence from the date of the instrument, or from the death of the person executing the same, such accumulation must be directed to be made for the benefit of one or more minors then in being, or in being at such death, and to terminate at the expiration of their minority :

“ 2. If the accumulation be directed to commence at any period subsequent to the date of the instrument, or subsequent to the death of the person executing such instrument, it must be directed to commence within the time allowed in the first section of this title, for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and must terminate at the expiration of their minority.

“ § 4. All directions for the accumulation of the interest, income or profit of personal property, other than such as are herein allowed, shall be void ; but a direction for an accumulation, in either of the cases specified in the last section,

§ 196. An implied direction to accumulate is subject to the statute just as an express direction would be.<sup>1</sup>

§ 197. Under the New York Statute, a trust for accumulation is valid, if the suspension of absolute ownership be limited to two lives in being, and if it is for the benefit of one or more minors in being, and will terminate at or before the expiration of their minority.<sup>2</sup> But if the estate limited to the minor is contingent, an accumulation of the income during his minority cannot be said to be for his benefit.<sup>3</sup>

§ 198. An accumulation for the benefit of an unborn child, to commence after his birth and to terminate at the expiration of his minority, has been held good, if the accumulation commences within the time permitted for the vesting of future estates or the time allowed for the suspension of absolute ownership.<sup>4</sup>

§ 199. But an accumulation which is not for the benefit of minors and which is not limited in its continuance to the minority of the ultimate beneficiaries and is without reference to such minority, is void.<sup>5</sup>

§ 200. A child *en ventre sa mère* is, for the purposes of the statute, to be considered a person *in esse*.<sup>6</sup>

§ 201. Under the New York statute, a trust for accumulation cannot be created for the benefit of a lunatic who is not a minor. But where an annuity is given absolutely to a lunatic, a court of equity may direct the surplus, beyond what is necessary for his support, to be paid over to his committee and accumulated for his

for a longer term than the minority of the persons intended to be benefited thereby, shall be void only as respects the time beyond such minority.

"§ 5. When any minor, for whose benefit a valid accumulation of the interest or income of personal property shall have been directed, shall be destitute of other sufficient means of support or of education, the chancellor, upon the application of such minor or his guardian, may cause a suitable sum to be taken from the moneys accumulated or directed to be accumulated, and to be applied to the support or education of such minor."

<sup>1</sup> *Haxtun v. Corse*, 2 Barb. Ch. 506; *Vail v. Vail*, 4 Paige, 317; *Hawley v. James*, 5 Paige, 318, 480, 482.

<sup>2</sup> *Kane v. Gott*, 24 Wend. 641, S. C. 7 Paige 521; *Cromwell v. Cromwell*, 2 Edw. Ch. 495; *Thompson v. Clendenning*, 1 Sand. Ch. 387; *Mason v. Mason*, 2 Sand. Ch. 432; affirmed as *Mason v. Jones*, 2 Barb. 229; *Savage v. Burnham*, 17 N. Y. 561; *Vail v. Vail*, 7 Barb. 226; *Hunter v. Hunter*, 17 Barb. 25; *Merserole v. Merserole*, 1 Hun. 66, S. C. 3 S. C. 192; *Crooke v. County of Kings*, 97 N. Y. 421.

<sup>3</sup> *Manice v. Manice*, 43 N. Y. 303.

<sup>4</sup> *Manice v. Manice*, 43 N. Y. 303; *Gott v. Cook*, 7 Paige, 521. But see *Kilpatrick v. Johnson*, 15 N. Y. 322; *Haxtun v. Corse*, 2 Barb. Ch. 506, where it was held that an accumulation for persons not *in esse* was void. See § 141 *et seq. ante*.

<sup>5</sup> *Harris v. Clark*, 7 N. Y. 242; *Manice v. Manice*, 1 Lans. 348, 43 N. Y. 303; *Despard v. Churchill*, 53 N. Y. 192; *Mason v. Mason*, 2 Sandf. Ch. 432; affirmed as *Mason v. Jones*, 2 Barb. 229; *Bean v. Hockman*, 31 Barb. 78; *Bryan v. Knickerbocker*, 1 Barb. Ch. 407; *Hawley v. James*, 5 Paige, 318; *Ruppert's Estate*, 1 Tuck. 480; *Jennings v. Jennings*, 7 N. Y. 547; *Pray v. Hegeman*, 92 N. Y. 508; *Scott v. Monell*, 1 Redf. 431.

<sup>6</sup> *Mason v. Jones*, 2 Barb. 229.

benefit, or for the benefit of those who may eventually be entitled to his property, as his next-of-kin. Such a trust for accumulation is not prohibited by the statute.<sup>1</sup>

§ 202. A trust for accumulation for the benefit of a number of infants in being, to continue beyond their minority, as for instance until the youngest comes of age, is void for the excess beyond minority, and the accumulation must cease on each infant's share upon his attaining his majority.<sup>2</sup>

§ 203. An accumulation to continue during the joint minority of two or more infants, for their joint benefit and the benefit of the survivor, is void under the statute.<sup>3</sup> But it has been held that when two or more minors, with the right of survivorship, take as tenants in common, and distributively and not jointly, and their several interests vest on the death of the testator, though the beneficial enjoyment thereof is postponed, an accumulation directed to continue until the youngest attains majority, is valid.<sup>4</sup>

§ 204. A direction for accumulation, during a minority, accompanied with a gift of the income of the accumulated fund, to the minor for life, and of the principal, upon his death, to other persons, is void; such accumulation vests absolutely in the minor, on his attaining full age.<sup>5</sup> So accumulation cannot be legally made for the benefit of minors and adults together, but to be valid must be solely for the benefit of minors.<sup>6</sup>

§ 205. Under the New York statute an accumulation for an absolute term, however short, has been held void.<sup>7</sup>

§ 206. It has been held that when an illegal or void direction to accumulate is independently engrafted upon a gift otherwise good, the gift may be held good, if the direction to accumulate is separable from the gift and can be stricken out without destroying its substantial form, but the direction to accumulate is bad altogether.<sup>8</sup> Since, therefore, the invalidity of a trust for accumula-

<sup>1</sup> *Craig v. Craig*, 3 Barb. Ch. 76.

<sup>2</sup> *Savage v. Burnham*, 17 N. Y. 561; *Ruppert's Estate*, 1 Tuck. 480; *Eels v. Lynch*, 8 Bos. 465; *Bolton v. Jacks*, 6 Rob. 166; *Gilman v. Reddington*, 24 N. Y. 9; S. C. 1 Hilt. 492; *Simpson v. English*, 1 Hun. 559. See, for the rule under the Thellusson Act and the Pennsylvania Act of 1853, § 141, *et seq.* and 153 *ante*.

<sup>3</sup> *Scott v. Monell*, 1 Redf. 431; *Thompson v. Clendenning*, 1 Sandf. Ch. 387.

<sup>4</sup> *Everitt v. Everitt*, 29 N. Y. 39, reversing 29 Barb. 112; *Ruppert's Estate*, 1 Tuck. 480; *Stevenson v. Lesley*, 29 How. Pr. 229.

<sup>5</sup> *Pray v. Hegeman*, 92 N. Y. 508, overruling *Meserole v. Meserole*, 1 Hun. 66, and *Barbour v. De Forest*, 28 Hun. 615, and reversing *Pray v. Hegeman*, 27 Hun. 603. See also *Gilman v. Healy*, 1 Dem. 404; *Bolton v. Jacks*, 6 Rob. 166.

<sup>6</sup> *Hawley v. James*, 5 Paige, 318; S. C. 16 Wend. 6; *Boynton v. Hoyt*, 1 Dem. 54; *Kilpatrick v. Johnson*, 15 N. Y. 322; *Pray v. Hegeman*, 92 N. Y. 508; but see *Bolton v. Jacks*, 6 Rob. 166.

<sup>7</sup> *Tucker v. Tucker*, 5 N. Y. 408; *Dayton v. Conklin*, 2 Ch. Dec. 54; *Hone's Exs. v. Van Schaick*, 20 Wend. 564.

<sup>8</sup> *Kilpatrick v. Johnson*, 15 N. Y. 322; *Savage v. Burnham*, 17 N. Y. 561; *Dodge v. Pond*, 23 N. Y. 69; S. C. 28 Barb. 121; *Gilman v. Reddington*, 24 N.

tion does not affect independent provisions in a will, a void trust for the accumulation of income does not invalidate the gift of the principal, when it does not involve an illegal suspension of the absolute ownership. If the gift of the principal is valid the persons for whose benefit the illegal accumulation is directed to be made have an immediate right to the whole income as it becomes due.<sup>1</sup> If, however, that part of a trust which is good cannot be separated from that which is bad, the whole trust is void.<sup>2</sup>

§ 207. The released income goes to the heir, next of kin or residuary devisee or legatee.<sup>3</sup> And it has been held that that section of the statute,<sup>4</sup> which provides that when "there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which, the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate," is, by virtue of section 2 of tit. 4 of chapter 4 of part 2 of the Revised Statutes, made applicable to cases in which an unlawful accumulation of the interest and income of personal property has been directed.<sup>5</sup>

§ 208. Where, however, there is a present gift in possession, the income released, by the statute, from accumulation, goes to the persons entitled to the estate and for whose benefit the accumulation is directed.<sup>6</sup>

§ 209. Finally, it may be remarked that trusts for accumulation in connection with charitable gifts not being specially excepted by statute in New York, are governed by the same rules as the ordinary trusts.<sup>7</sup>

Y. 7; *Killam v. Allen*, 52 Barb. 605; *Westerfield v. Westerfield*, 1 Bradf. 137; *Forsyth v. Rathbone*, 34 Barb. 388; *Haxtun v. Corse*, 2 Barb. Ch. 506; *Hawley v. James*, 5 Paige, 318; *McCormack v. McCormack*, 60 How. Pa. 196; *Williams v. Williams*, 8 N. Y. 538. So a codicil providing for an unlawful accumulation will not affect a valid trust created by the will; *Barbour v. De Forest*, 61 Hun. 573; *Leavitt v. Wolcott*, 65 How. Pr. 51.

<sup>1</sup> *Kilpatrick v. Johnson*, 15 N. Y. 322; *Haxtun v. Corse*, 2 Barb. Ch. 508; *Lang v. Ropke*, 5 Sandf. S. C. 363, 371.

<sup>2</sup> *Smith v. Edwards*, 23 Hun. 223.

<sup>3</sup> *Vail v. Vail*, 4 Paige, 317, S. C. 7 Barb. 226; *Van Vetchen v. Van Vetchen*, 8 Paige, 104; *Haxtun v. Corse*, 2 Barb. Ch. 506; *Craig v. Craig*, 3 Barb. Ch. 76; *Thorn v. Coles*, 3 Edw. Ch. 330; *Field v. Field*, 4 Sand. Ch. 528; *De Barante v. Gott*, 6 Barb. 492; *Yates v. Yates*, 9 Barb. 324; *Dodge v. Pond*, 23 N. Y. 69; S. C. 28 Barb. 121; *Ex parte Dey Ermand*, 24 Hun. 1, overruling *Grant v. Grant*, 3 Redf. 283; *McGrath v. Van Stavoren*, 8 Daly, 454; *Hull v. Hull*, 24 N. Y. 647, 650; *Rice v. Barrest*, 102 N. Y. 161.

<sup>4</sup> Section 40 of Art. 1, tit. 2 of Ch. 1 of part 2 of the Revised Statutes.

<sup>5</sup> *Cook v. Lowry*, 29 Hun. 20; *Manice v. Manice*, 43 N. Y. 385; *Bolton v. Jacks*, 6 Robt. 230; *Lang v. Ropke*, 5 Sandf. 371; *Robinson v. Robinson*, 5 Lans. 167, 168; *Pray v. Hegemen*, 92 N. Y. 508.

<sup>6</sup> *Pray v. Hegemen*, 92 N. Y. 508; *Robinson v. Robinson*, 5 Lans. 165.

<sup>7</sup> *Wilson v. Lynt*, 30 Barb. 124; *Levy v. Levy*, 33 N. Y. 97; *Kilpatrick v. Johnson*, 15 N. Y. 322; *Matter of Starr*, 2 Dem. 141; *Rose v. Rose*, 4 Abb. Ct. of App. 108; *Bascomb v. Albertson*, 34 N. Y. 504; *Wetmore v. Parker*, 7 Lansing, 121; see § 76, *ante*; see Gray on Perp. § 609.

§ 210. In Michigan,<sup>1</sup> Wisconsin,<sup>2</sup> and Minnesota,<sup>3</sup> statutes have been passed which relate to the subject of the accumulation of rents and profits of real estate, and the provisions of these statutes have been taken from the New York statutes on the same subject with scarcely an alteration. These statutes, therefore, are construed in accordance with the New York decisions upon the Revised Statutes.<sup>4</sup> But these states, however, have not passed any statutes upon the subject of the accumulation of the interest and income of personal property.<sup>5</sup>

§ 211. In Indiana,<sup>6</sup> the New York rules on the subject of the accumulation of interest and income of personal property have been separately adopted, but the rules relating to the accumulation of rents and profits of real estate have not been adopted.

§ 212. *California*. "All directions for the accumulation of the income of property, except such as are allowed by this title, are void. An accumulation of the income of property for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the accumulation is to arise, as follows: 1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or, 2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority."<sup>7</sup> "If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority."<sup>8</sup> When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper Court, upon application, may direct a suitable sum to be applied thereto out of the fund."<sup>9</sup> This statute is taken from the New York statute and is to be construed in accordance with the New York cases.

<sup>1</sup> 2 Mich. Comp. Laws (1871) c. 147, §§ 37-40; *Toms v. Williams*, 41 Mich. 552.

<sup>2</sup> 2 Wis. Rev. Sts. (1858) c. 83, §§ 37-40; *De Wolf v. Lawson*, 61 Wis. 469; *Scott v. West*, 63 Wis. 529.

<sup>3</sup> Minn. Gen. Sts. (1866) c. 45, §§ 37-40.

<sup>4</sup> *Scott v. West*, 63 Wis. 529.

<sup>5</sup> *Toms v. Williams*, 41 Mich. 552, 562; *De Wolf v. Lawson*, 61 Wis. 469; *Scott v. West*, 63 Wis. 529.

<sup>6</sup> Rev. Sts. (1881) §§ 6058, 6059; 2 G. & H. Sts. 482, § 2; see *Dyson v. Repp*, 29 Ind. 482.

<sup>7</sup> Civil Code, §§ 723, 724.

<sup>8</sup> Civil Code, § 725.

<sup>9</sup> Civil Code, § 726.



§ 213. *Alabama.* "No trust of estates for the purpose of accumulation only, can have any force or effect for a longer term than ten years, unless when for the benefit of a minor, in being at the date of the conveyance, or if by will, at the death of the testator; in which case the trust may extend to the termination of such minority."<sup>1</sup> The provisions of this statute have been taken from the provisions of the Thellusson Act; it would seem, therefore, that the decisions upon both the Thellusson Act and the Pennsylvania Statute of 1853, would apply.

---

<sup>1</sup> Rev. Code (1886), § 1835; Rev. Code (1876), § 2189.



# INDEX.

[The references are to the sections of supplementary chapter.]

	SECTION
ABSOLUTE INTERESTS,	
trusts for accumulation, in connection with . . . . .	52-57
ACCELERATION,	
of the enjoyment of property, not caused by statutes against accumulation . . . . .	162, 171
ACCUMULATION,	
trust for, too remote . . . . .	51
beyond limits of rule against perpetuities, void . . . . .	51, 74
in connection with estates in fee-simple and absolute interests in property . . . . .	52-62
may be stopped at any time by one having vested indefeasible interest . . . . .	55-70, 77, 78
if destructible, not too remote . . . . .	17, 50-70, 77, 78
nor within statutes against accumulation . . . . .	55, 110
in connection with estates in fee-tail . . . . .	58-62
in connection with estates for life . . . . .	63-65
in connection with charitable gifts . . . . .	74-78
by force of law, during minority and lunacy . . . . .	79, 80
direction for, to remote period, void . . . . .	51
not readily construed as condition precedent to gift . . . . .	71, 75
but if condition precedent, and too remote, gift is bad altogether . . . . .	51, 74
to pay debts and legacies to persons in being, not too remote . . . . .	67, 69
till fund reaches a certain amount . . . . .	68
until sale or conversion and investment takes place . . . . .	72, 73
express and implied . . . . .	96-105, 196
too remote, though accumulation can be stopped, if the interests of those entitled to stop is not ascertained . . . . .	70
when separable from and independent of a gift . . . . .	66, 206
at and during trustee's discretion . . . . .	57
incidental and subsidiary to general trusts . . . . .	114-119
void for remoteness, not rendered good <i>pro tanto</i> by statutes against accumulation . . . . .	92-94
destination of, when void at common law . . . . .	51
when void under English and Pennsylvania statutes . . . . .	161-179
when void under New York statutes . . . . .	207-208
arising under a deed . . . . .	109
ceasing when minor reaches majority . . . . .	56, 57, 110, n., 159, 204
<i>dehors</i> the statutes against accumulation . . . . .	92-94
excessive and released, destination of . . . . .	51, 161-179, 207, 208
maintenance out of, during minority . . . . .	81-84, 160, n., 192-194, 195
simple and compound . . . . .	106-108

[The references are to the sections of supplementary chapter.]

	SECTION
<b>ACCUMULATION—continued.</b>	
statute as to, in England, Thellusson Act . . . . .	86, n.
Pennsylvania . . . . .	87, n.
Alabama . . . . .	213
Indiana . . . . .	211
New York . . . . .	195, n.
Michigan, Wisconsin and Minnesota . . . . .	210
California . . . . .	212
in Scotland and Victoria . . . . .	189
<b>ALABAMA,</b>	
statute changing rule against perpetuities . . . . .	43
as to accumulation . . . . .	213
<b>ALIENATION,</b>	
restraints on, not allowed, at law or in equity, either in England or the United States, except in separate estate of married women . . . . .	53-55, 58, 63, 120
laid on one having vested indefeasible estate can be disre- garded, and therefore not obnoxious to the rule against per- petuities or to the statutory rules against accumulation, 54-65, 110 allowed in Pennsylvania and Massachusetts . . . . .	54, 63, 120-134
<b>ALLOWANCE.—See MAINTENANCE.</b>	
<b>AMERICA.—See UNITED STATES.</b>	
<b>CALIFORNIA,</b>	
statutes changing rule against perpetuities . . . . .	48
as to accumulation . . . . .	212
<b>CHARITY,</b>	
whether subject to the rule against perpetuities . . . . .	74, 75
gifts to, generally construed as unconditional . . . . .	75
when subject to trusts for accumulation . . . . .	75-78
when separable from and independent of directions to accu- mulate . . . . .	66, 206
when unconditional, if too remote, carried out <i>cy pres</i> . . . . .	75
to which remote accumulation is condition precedent, is void . . . . .	74
otherwise when charity is unconditional . . . . .	75
direction to accumulate income of an unconditional gift to, if too remote, income goes at once to charity . . . . .	75
whether postponement of enjoyment and direction to accumulate in connection therewith is to be disregarded in case of . . . . .	75, 77, 78
trust for accumulation in connection with, subject to statutory rules against accumulation unless specially excepted . . . . .	76, 209
under Pennsylvania Statute . . . . .	191
in New York . . . . .	209
<b>CLASS,</b>	
gifts to, subject to a discretionary power to accumulate . . . . .	65
maintenance in cases of . . . . .	81-84, 160
<b>COMMON LAW,</b>	
trusts for accumulation at . . . . .	37, 51-84
origin and history of trusts for accumulation . . . . .	3-28
<b>COMPOUND ACCUMULATION . . . . .</b>	
	106-108

[The references are to the sections of supplementary chapter.]

	SECTION
CONDITION PRECEDENT,	
subject to rule against perpetuities . . . . .	51-74
CONDITIONAL LIMITATION.— <i>See</i> LIMITATION.	
CONFLICT OF LAWS,	
on statutes as to accumulation . . . . .	194, n.
CONNECTICUT,	
statute changing rule against perpetuities . . . . .	41
CONSTRUCTION,	
rule against perpetuities, not a rule of . . . . .	52
English and Pennsylvania Statutes, not rules of . . . . .	92
of a direction to accumulate . . . . .	71
of a gift to charity . . . . .	75
of English and Pennsylvania Statutes . . . . .	88-91
CONTINGENT GIFT.— <i>See</i> GIFT.	
CONTINGENT INTEREST,	
generally subject to rule against perpetuities . . . . .	30
how distinguished from vested interests . . . . .	31
CONTINGENT REMAINDER.— <i>See</i> REMAINDER.	
CONVERSION,	
direction to accumulate until, takes place . . . . .	72, 73
of rents and profits of realty under the Thellusson Act . . . . .	176
COSTS,	
in suits involving the application of the Thellusson Act . . . . .	190, n.
CY PRES,	
method of carrying out unconditional gift to a charity when too remote . . . . .	75
DEBTS, PAYMENT OF	
trust for accumulation for, not void for remoteness . . . . .	67
provisions for, excepted from Thellusson Act . . . . .	181
DEED,	
accumulation arising under . . . . .	109
DESTINATION,	
of excessive and released accumulations . . . . .	51, 161-179, 207, 208
DESTRUCTIBLE INTEREST,	
not too remote, if destroyed by one having present vested interest . . . . .	54
trust for accumulation, if destructible, not void for remoteness, 17, 50-70, 77, 78	
nor subject to statutory rules against accumulation . . . . .	55, 110
DEVISE.— <i>See</i> EXECUTORY DEVISE.	
DIRECTION,	
to accumulate.— <i>See</i> ACCUMULATION.	
of testator, separate from direction to accumulate . . . . .	66, 160, 206
express and implied, to accumulate . . . . .	96-105, 196

[The references are to the sections of supplementary chapter.]

	SECTION
DISCRETIONARY POWER,	
in trustees, effect on remoteness . . . . .	65
in connection with spendthrift trusts in Pennsylvania . . . . .	126
DISPOSITION,	
of testator, affected by statutes on accumulation . . . . .	160
DISTRIBUTION,	
of income of gift to charity, when not accumulated . . . . .	75
ENGLAND,	
Thellusson Act, statute as to accumulation.—See THELEUSSON ACT	
restraints on alienation not allowed in, except in separate estate	
of married women . . . . .	53-55, 58, 63, 120
EQUITABLE INTEREST,	
when vested . . . . .	31
when future, subject to rule against perpetuities . . . . .	30, 31
arise out of trusts for accumulation . . . . .	30
arising out of a resulting trust on a future contingency to the cre-	
ator of a trust, whether subject to rule against perpetuities . . .	31, n.
ESCHEAT,	
of income released by the Statutes from Accumulation . . . . .	175
ESTATE IN FEE-SIMPLE.—See FEE-SIMPLE, ESTATES IN.	
ESTATE FOR LIFE.—See LIFE, ESTATE FOR.	
ESTATE FOR YEARS.—See YEARS, ESTATE FOR.	
ESTATE TAIL.—See TAIL, ESTATE IN.	
EXCESSIVE ACCUMULATION,	
destination of . . . . .	55, 161-179, 207, 208
EXECUTORY DEVISE,	
trusts for accumulation arising out of . . . . .	9-28,
EXPRESS DIRECTION TO ACCUMULATE . . . . .	96, 196
FEE-SIMPLE, ESTATES IN,	
trusts for accumulation in connection with . . . . .	52, 57
FUTURE LIMITATION.—See LIMITATION.	
FUTURE INTERESTS,	
subject to rule against perpetuities.—See CHAP. III.	
GEORGIA,	
statute declaratory of rule against perpetuities . . . . .	39
GESTATION,	
period of . . . . .	32, 34

[The references are to the sections of supplementary chapter.]

	SECTION
<b>GIFT,</b>	
of income accumulated beyond limits of rule against perpetuities, void . . . . .	51, 74
to charity, subject to trust for accumulation . . . . .	74, 78
when independent of and separable from a direction to accumulate . . . . .	66, 206
contingent, of residuary personal property . . . . .	3-8, 21, 22
<b>HISTORY,</b>	
of trusts for accumulation . . . . .	3-28
<b>IMPLICATION,</b>	
directions by, to accumulate . . . . .	96-105, 196
<b>INCOME,</b>	
destination of excessive and released . . . . .	161-179
trusts for accumulation arising out of, of contingent gifts of resi- duary personalty and of executory devises of residuary realty . . . . .	3-28
accumulation of, <i>see</i> ACCUMULATION, destination of, excessive and released . . . . .	161-179
<b>INDIANA,</b>	
statute changing rule against perpetuities . . . . .	46
as to accumulation . . . . .	211
<b>INFANCY.—See MINORITY.</b>	
<b>INTENTION,</b>	
of testator not unduly affected by void direction to accumulate . . . . .	160
of testator must govern . . . . .	179, 191
defeating of, object of rule against perpetuities and statutory rules against accumulation . . . . .	52, 92
<b>INTERPRETATION.—See CONSTRUCTION.</b>	
<b>INVESTMENT,</b>	
direction to accumulate until, takes place . . . . .	72, 73
<b>IOWA,</b>	
statute declaratory of the rule against perpetuities . . . . .	39
<b>IRELAND,</b>	
Thellusson Act does not extend to . . . . .	189
<b>JOINT TENANTS,</b>	
accumulation during minority of, under New York Statute . . . . .	203
<b>KENTUCKY,</b>	
statute declaratory of the rule against perpetuities . . . . .	39
<b>LEGACY,</b>	
direction to accumulate to pay, to persons in being, not too remote . . . . .	69
<b>LEGISLATIVE CHANGES,</b>	
of rule against perpetuities . . . . .	38-50
on the number of lives . . . . .	43-45, 47
on question of accumulation . . . . .	86, n., 87, n., 195, n, 210-213,
<b>LIFE, ESTATE FOR,</b>	
equitable, may be made inalienable in Pennsylvania and Massa- chusetts . . . . .	63, n, 120-134
in spendthrift trusts in Pennsylvania . . . . .	120-134

[The references are to the sections of supplementary chapter.]

## SECTION

LIFE, ESTATE FOR—*continued.*

at discretion of trustees, how dealt with as to remoteness . . . . .	65
subject to trusts for accumulation . . . . .	63-65

LIMITS FOR ACCUMULATION.—*See PERIODS.*

## LIMITATION,

subsequent, not accelerated . . . . .	162
subsequent to estate tail . . . . .	59
conditional, not different from so-called equitable contingent remainder and executory devise . . . . .	9-15

## LIVES,

in being, number of, unlimited at common law . . . . .	33
limited by statute in Alabama . . . . .	43
Mississippi . . . . .	44
New York . . . . .	45
Michigan, Wisconsin and Minnesota . . . . .	47
not limited by statute in California . . . . .	48

## LOUISIANA,

rules of property in, where derived . . . . .	50
---	----

## LUNACY,

accumulation by force of law during . . . . .	80
---	----

## MAINTENANCE,

out of accumulation, during minorities . . . . .	81-84, 160, n., 192-194, 195
form of order directing . . . . .	84, n.
limited by Thellusson Act . . . . .	84, n., 192, n.
when allowance for, continues after period for accumulation limited by Thellusson Act has expired . . . . .	84, n., 160, n., 192, n.
in cases of gifts to a class of minors . . . . .	81-84, 160
under the Pennsylvania Statute . . . . .	192-194
New York Statute . . . . .	195, n.

## MARRIED WOMEN,

restraints on alienation allowed in the case of property settled or devised to the sole and separate use of . . . . .	53, 58, 63
---	------------

## MASSACHUSETTS,

restraints on alienation of equitable life interests allowed in . . . . .	63, n.
of equitable fee, whether allowed in . . . . .	54
accumulation governed by rules of common law in . . . . .	37, n.

## MICHIGAN,

statutes changing rule against perpetuities . . . . .	47
as to accumulation . . . . .	210

## MINNESOTA,

statutes changing rule against perpetuities . . . . .	47
as to accumulation . . . . .	210

## MINORITY,

accumulation during, in connection with estates tail . . . . .	58-62
under Thellusson Act . . . . .	139-146
under Pennsylvania Statute . . . . .	147-155



[The references are to the sections of supplementary chapter.]

	SECTION
<b>MINORITY</b> — <i>continued</i> .	
under New York Statute . . . . .	195-204
ceases when infant reaches twenty-one, . . . . .	56, 57, 110, n., 159, 204
of joint tenants and tenants in common under New York Statute . . . . .	203
maintenance out of accumulations during . . . . .	81-84, 160, n., 192-194, 195
accumulation by force of law during . . . . .	79
<b>MISCHIEFS</b> ,	
arising from allowing so wide a range of accumulation as the common law permitted . . . . .	85
<b>MISSISSIPPI</b> ,	
statute changing rule against perpetuities . . . . .	44
<b>MIXED PROPERTY</b> ,	
destination of income of, under statutes . . . . .	175
<b>MODIFYING CLAUSE</b> ,	
how discretionary power in trustees should be dealt with . . . . .	65
<b>NEW YORK</b> ,	
statutes, changing rule against perpetuities . . . . .	45
used as a model for other statutes . . . . .	47, 48
as to accumulation . . . . .	195-209
given at length . . . . .	195
applies to express and implied directions to accumulate . . . . .	196
period of accumulation allowed by . . . . .	197-205
when gift independent of and separable from direction to accumulate, not subject to . . . . .	206
income released by, destination of . . . . .	207, 208
trusts for accumulation subject to . . . . .	196-206
trusts for accumulation in connection with charitable gifts, subject to . . . . .	76, n., 209
partly adopted in Michigan, Wisconsin, Minnesota and Indiana . . . . .	210, 211
act similar to, in California . . . . .	212
<b>OHIO</b> ,	
statute changing rule against perpetuities . . . . .	42
<b>ORIGIN OF TRUSTS FOR ACCUMULATION</b> . . . . .	3-6, 21
<b>PARENT</b> ,	
interest of, in instrument creating portions under Thellusson Act . . . . .	187
<b>PENNSYLVANIA</b> ,	
restraints on alienation of equitable life interest allowed in . . . . .	63, 120-134
of equitable fees not allowed in . . . . .	54
spendthrift trusts in . . . . .	120-134
statute as to accumulation of income of charitable corporations and associations . . . . .	191, n.
statute as to accumulation, given at length . . . . .	87, n.
modeled after Thellusson Act . . . . .	87
construction of . . . . .	88-91
not a rule of construction . . . . .	92
trust for accumulation void for remoteness, not rendered good 'pro tanto' by . . . . .	93-94
division of the subject of the consideration of . . . . .	95
applies to express and implied directions to accumulate . . . . .	96-105
applies to simple and compound accumulation . . . . .	106-108

[The references are to the sections of supplementary chapter.]

## SECTION

PENNSYLVANIA—*continued*.

applies to accumulation whether of whole or of part of the income of property . . . . .	106
applies to accumulation arising under a deed . . . . .	109
accumulation which can be stopped at pleasure not within . . . . .	110, 112
application of, to directions to accumulate incidental and subsidiary to general trusts . . . . .	114-118
whether applicable to spendthrift trusts . . . . .	120-134
period for accumulation allowed by . . . . .	147-155
avoids accumulations in excess of statute only . . . . .	156-159
does not affect separate dispositions of testator . . . . .	160
income released by, destination of . . . . .	161-179
does not accelerate enjoyment . . . . .	162
proviso of, as to charities . . . . .	191
as to allowances for maintenance . . . . .	192-194
conflict of laws as to . . . . .	194, n.

## PERIODS,

during which accumulation allowed by Thellusson Act . . . . .	86, n., 135-146
by Pennsylvania Statute . . . . .	87, n., 147-155
by New York Statute . . . . .	195, 197-204
in other States . . . . .	210-213

PERPETUITY.—*See* RULE AGAINST PERPETUITIES.

## PERSONAL PROPERTY,

residuary, trusts for accumulation of income arising out of contingent gifts of . . . . .	3-8, 21-22
income of, released from accumulation, destination of . . . . .	55, 164-172, 174-176, 207, 208
interests in, subject to rule against perpetuities . . . . .	30

## PORTION,

accumulation of income for raising, what permissible under Thellusson Act . . . . .	182-187
---	---------

## POSTPONEMENT OF ENJOYMENT,

of indefeasible estate, provisions for, may be disregarded and therefore not too remote . . . . .	55-70
so, not too remote; if in connection with direction to accumulate . . . . .	55-70, 77, 78
not within statutory rules against accumulation . . . . .	55, 110
and direction to accumulate in connection therewith, whether disregarded in case of charity . . . . .	77, 78

## POWER,

discretionary, in trustees, to accumulate . . . . .	65
in spendthrift trusts . . . . .	120-134

## PRICE ACT . . . . .

87

## PROVISION,

for accumulation which violates the statutory limits . . . . .	156-160
--	---------

## PROVISOS,

of Thellusson Act . . . . .	180-190
of Pennsylvania Statute . . . . .	190-194

## REAL ESTATE,

residuary, trusts for accumulation of income arising out of executory devises of . . . . .	9-28
--	------

[The references are to the sections of supplementary chapter.]

SECTION

RELEASED ACCUMULATION,	
destination of . . . . .	55, 161-179, 207, 208
REMAINDER,	
so-called equitable contingent, not different from executory de- vises . . . . .	9-15, 31
RENT,	
when applicable as a vested interest <i>de anno in annum</i> . . . . .	17
RESIDUARY PERSONAL PROPERTY,	
trusts for accumulation of income arising out of contingent gifts of . . . . .	3-8, 21, 22
RESIDUARY REAL ESTATE,	
trusts for accumulation of income arising out of executory devises of	9-28
RESTRAINT ON ALIENATION.—See ALIENATION.	
RESULTING TRUST,	
same as so-called equitable reversions . . . . .	31
REVERSION,	
so-called equitable, same as resulting trust . . . . .	31
ROMAN LAW,	
basis of rules of property in Louisiana . . . . .	50
RULES AGAINST PERPETUITIES,	
stated . . . . .	29, 32
is judge-made law . . . . .	29
does not apply to provisions postponing enjoyment of indefeasible estates . . . . .	55-70
whether this is so in the case of a charity . . . . .	77, 78
does not apply to interests destructible by one having present vested interest . . . . .	55-70
general application of . . . . .	30, 31
cases instrumental in developing, . . . . .	12, 20, n., 29, n.
governs accumulations in Massachusetts . . . . .	37, n.
origin and history . . . . .	29, n., 36, n.
not a rule of construction . . . . .	52
requires that condition precedent <i>must</i> happen within prescribed limits . . . . .	51
allows any number of lives in being . . . . .	33
period of gestation . . . . .	34
gross period of twenty-one years . . . . .	35
runs from testator's death, not date of will . . . . .	36
is the law in the absence of statute, limiting the duration of all trusts for accumulation . . . . .	37, 51
whether it applies to charites . . . . .	74
modified by statutes limiting accumulating by the Thellusson Act	86, n.
in Pennsylvania . . . . .	87, n.
Alabama . . . . .	213
Indiana . . . . .	211
New York . . . . .	195, n.
Michigan, Wisconsin and Minnesota . . . . .	210
California . . . . .	212

[The references are to the sections of supplementary chapter.]

	SECTION
SALE,	
direction to accumulate, until, takes place . . . . .	72, 73
SCOTLAND,	
application of Thellusson Act to . . . . .	189
SIMPLE ACCUMULATION, . . . . .	106, 107
SPENDTHRIFT TRUST,	
origin of . . . . .	123, 124
two kinds of . . . . .	121, 122, 125, 126
growth of, in Pennsylvania . . . . .	127
peculiar to Pennsylvania and Massachusetts . . . . .	121
whether accumulation under, subject to Pennsylvania Statute against accumulation . . . . .	128-134
STATES.—See UNITED STATES.	
STATUTES,	
reinforcing and modifying rule against perpetuities . . . . .	38-50
as to accumulation . . . . .	86, n., 87, n., 195, 210-213
TAIL, ESTATE IN,	
trusts for accumulation in connection with . . . . .	58-62
TENANT,	
in common, accumulation during minority of the youngest of two or more, under New York Statutes . . . . .	203
joint, accumulation during minority of, under New York Statute for life, when entitled to income released by the Statutes, from accumulation . . . . .	203 170
THELLUSSON ACT,	
given at length . . . . .	86, n.
construction of . . . . .	88-91
not a rule of construction . . . . .	92
trusts for accumulation void for remoteness, not rendered good <i>pro tanto</i> . . . . .	93, 94
division of the subject of the consideration of . . . . .	95
applies to, express and implied directions to accumulation . . . . .	96-104
simple and compound accumulation . . . . .	106-108
to accumulation whether of whole or of part of the income of property . . . . .	106
accumulation which can be stopped at pleasure not within . . . . .	110, 111
application of, to directions to accumulate incidental and subsid- iary to general trusts . . . . .	114-118
application of, to policies of insurance . . . . .	119
periods for accumulation allowed by . . . . .	135-146
accumulation can be for one only of the periods . . . . .	136
avoids accumulation in excess of act only . . . . .	156, 157
does not affect separate dispositions of testator . . . . .	160
income released by, destination of . . . . .	161-179
does not accelerate enjoyment . . . . .	162
provisos of the act . . . . .	180-191
exceptions from the act, and their construction . . . . .	180-188
extends to Scotland . . . . .	189
to Victoria . . . . .	189, n.
does not extend to Ireland . . . . .	189, n.

[The references are to the sections of supplementary chapter.]

	SECTION
<b>THELLUSSON ACT—continued.</b>	
conflict of laws as to . . . . .	194, n.
act similar to, in Pennsylvania . . . . .	87, n.
basis of Alabama statute . . . . .	213
<b>TIMBER,</b>	
produce of, directions touching, excepted from Thellusson Act . . . . .	188
<b>TIME,</b>	
from which rule against perpetuities runs is testator's death, not date of will . . . . .	36
<b>TRANSGRESSIVE TRUSTS FOR ACCUMULATION,</b> . . . . .	156-179
<b>TRUST FOR ACCUMULATION.—See ACCUMULATION.</b>	
defined . . . . .	1
limited only in duration by common law and statute . . . . .	2
origin and history of . . . . .	Chap. II
at common law . . . . .	Chap. IV
under statute . . . . .	Chap. V-X
<b>TRUSTEE,</b>	
duty of, to accumulate an infant's income . . . . .	79
neglecting to comply with direction for accumulation charged with compound interest . . . . .	194, n.
discretionary power of, effect on remoteness . . . . .	57
discretionary power of, to accumulate, in spendthrift trusts . . . . .	120-134
<b>TWENTY-ONE YEARS,</b>	
may be taken as term in gross at common law . . . . .	35
gross period of, allowed by Thellusson Act . . . . .	133
<b>UNITED STATES,</b>	
restraints on alienation not allowed in, except in separate estate of married women, except in Pennsylvania and Massachusetts . . . . .	53, 55, 58, 63, 120
rule against perpetuities has always prevailed in . . . . .	37
statutes reinforcing or modifying the rule against perpetuities . . . . .	38-50
statutes as to accumulation . . . . .	86, n., 87, n., 195, n., 210-213
<b>VESTED INTERESTS,</b>	
not within rule against perpetuities . . . . .	30, 31
what interests are . . . . .	31
<b>WISCONSIN,</b>	
statutes changing rule against perpetuities . . . . .	47
as to accumulation . . . . .	210
<b>YEARS,</b>	
estates for, allowed only for twenty-one years in Alabama . . . . .	43
term of, direction to accumulate during . . . . .	69, 205



-

,

(1370)

# INDEX.

[The paging refers to the [\*] pages.]

## ABATEMENT.

adverse possession equivalent to, in equity, 724, 725.

## ABATOR.

not bound by a use, 3.

## ABROAD.

assignment executed, when an act of bankruptcy, 512, 513.

cestui que trust resident abroad, payment to, 353, 354, 476.

fraudulent conveyance of lands, relieved against, 49.

injunction against taking possession of lands, 49.

lands abroad (within the Queen's dominions) within Trustee Act, 1850, ss.  
54, 56 . . . 1039.

equities and contracts as to, enforced, 48, 49 ; whether so as to trusts  
qu. 49, 50.

lien against, cannot be enforced 49.

management of property abroad, commission when allowed in respect of,  
628 *et seq.*

person domiciled, not suitable to be trustee, 40, 847, 1030.

personal estate abroad, trust of, enforced in equity, 48.

real estate abroad, equities attaching to, how far enforced, 48.

receiver when appointed where trustees out of jurisdiction, 983.

rents and profits of land, account of, directed, 49.

Scotch estate, equitable mortgage of, enforced, 48.

service on persons abroad does not enlarge jurisdiction, 49.

Trustee Act, under, 1034.

Trustee Relief Acts, under, 1001, 1006.

trustee resident abroad, 40, 659, 847.

incapacitated, is not, from acting, 658, 659.

new trustee may be appointed instead of, 646, 649, 847, 1028, 1033.

payment to co-trustees ordered by Court, 355 note (*f*).

vesting order may be made as to estate of, 1016, 1028. See TRUSTEE  
ACTS.

when appointment of, is proper, 662.

trusts of land abroad how far effectual, 48, 49, 50.

## ABSCONDING TRUSTEE.

removed, may be, 847.

service of petition for appointment of new trustees on, unnecessary, 1033.

## ABSENCE.

trust, of, when a ground for appointing new trustee, 1016 *et seq.* See  
TRUSTEE ACTS.

## ABSOLUTELY ENTITLED.

who are, within Trustee Acts, 1022.

† 22 LAW OF TRUSTS. (1371)

[The paging refers to the [\*] pages.]

- ACCEPTANCE OF TRUST**, 200 *et seq.*, 251, 252.  
 acting in execution of trust, by, 200, 201, 205, 251.  
   what acts constitute acceptance, 201, 203, 251.  
 attorney, by signing power of, 202, 203, 207.  
 constructive acceptance, what amounts to, not easily to be determined, 201.  
 declaration, by, 200.  
 deed, by, not requisite, 205; but may make breach of trust a specialty debt, 205.  
**duties consequent on**, 206, 207.  
   trustee must not rely on co-trustee, 207.  
     must inform himself of state of trust, 207.  
     should have inventory of chattels made, 207.  
   may assume no breach of trust if he has no notice of any, 207.  
 execution of trust deed, by, 200.  
**executor**, by, how made, 201.  
   by voluntary interference with assets, 202.  
     as by assigning lease, bringing action, selling assets, 202, 203.  
     unless conduct can be clearly explained, 203.  
   by proving will, 201.  
   executor of executor, by, 202.  
   executor who is also trustee cannot prove will, and renounce trusts of estate, 202, 204.  
   legatee being executor may claim legacy though he renounce, 197.  
 express declaration, by, 200.  
 mistake, person assuming character of trustee by, accountable, 207, 203.  
 parol, by, sufficient, 205.  
 parol evidence admissible to prove, 205.  
 presumption of, by lapse of time, 201; but not from taking custody of trust deed, 204.  
 probate, effect of trustee taking out, 201, 202.  
 recitals in trust deed, trustee should see to correctness of, 201.  
 renunciation after acceptance not permitted, 251, 252.  
 several trust estates, by devisee of, 204.  
 time, by lapse of, without disclaimer, 197, 201.  
 trust deed, by executing, 200; but *secus* merely taking custody of, 204.  
 two trusts by same instrument, trustee accepting one, deemed to have accepted the other, 204.  
 writing, by, not necessary before commencing action, 205
- ACCIDENT.**  
 no excuse for trustee, if it occur during misfeasance, 907.  
 possession of title deeds by, will not *per se* confer priority, 714
- ACCORD.**  
 no bar without satisfaction, 923.
- ACCOUNT.**  
 agent of trustee, against, 191, 482, 641, 642  
*cestui que trust*, against, gaining by breach of trust, 910, 911.  
 Chancery Division, matters of account are assigned to, 887  
 charity, against trustees of, when directed, 872, 934 *et seq.*  
 complication in, a ground for relief in equity, 886.  
 copy of, whether *c. q. t.* entitled to, 691.  
 costs of taking, 990, 991, 993, 994. See **COSTS**.  
 creditors of trustee not entitled to account of administration, 641  
 decree for, merely, not within 1 & 2 Vict. c. 110, s. 18, 804 note (a).  
   delay when a bar to action for, 870 *et seq.*  
 expenses, of, duty of trustee to keep, 638.  
 fraudulent concealment of lease till term expired, where, 888.  
 ignorant, where trustee was, of his true character, 244, 889, 904.



[The paging refers to the [\*] pages.]

# ACCOUNT—continued.

- improper, rendered by co-trustee, liability of trustee for, 691.
- inconvenience, claim for account when refused on ground of, 870, *et seq.*, 934.
- just allowances, direction for, when given, 278, 890.
- lashes, where plaintiff guilty of, account restricted to institution of suit, 871, 889.
- where surviving partner guilty of, 872.
- lapse of time, after, indulgence shown to trustee, 691, note (e).
- legal title, account in equity in respect of, 886, 890, 891.
- Limitations, Statute of, formerly not applicable to action for, 871.
- married woman, settlement of accounts by, with trustee, 786.
- mesne rents and profits**, of, 885 *et seq.* See RENTS AND PROFITS.
- ignorance or mistake of trustee, 244, 339, 344, 934, 936.
- lands abroad, of, 49.
- misstating, trustee is fixed with costs, 993.
- parish, no retrospective account against, 936
- preliminary accounts and inquiries, Court may make order for, 351.
- profits of trade, of, against person in fiduciary relation, 276, 278. See PROFITS OF TRADE.
- refusal of trustee to render, 691 note (e), 993.
- retiring trustee, against, of money paid to induce him to retire, 277.
- settled, opening, against solicitor trustee, 630.
- tenant for life, against, who has received excessive income, 334, 335.
- trustee, against, who has employed trust money in trade, 276, 277, 340 *et seq.*
  - who has purchased trust estate, 491, 494; who has renewed lease, 186.
  - who has delayed sale of trust property, 424.
- trustee, duty of, to keep proper, 691, 993; and produce same, 449, 975, 976.
- costs of neglect or refusal to render, 691, 930, 993.
- right of trustee to have accounts taken in presence of *c. q. t.*, 1028.
- vouchers, trustee entitled to custody of, 449.
- but must produce them to *c. q. t.*, 449.
- waste, in respect of, 188, 872.
- wilful default, on footing of, when directed, 904, 905.

# ACCOUNTANT.

- trustee may employ, 633.

# ACCUMULATION.

- application of income before conversion where accumulation directed, 301.
- infant, of income of, during minority, 579, 582, 584, 585.
- maintenance out of, form of order directing, 587.
- simple and compound, 90.
- trust for**, when lawful, 89 *et seq.* See THELLUSSON ACT.
- perpetuity, leading to, bad if possibly exceeding lawful limit, 89; and see 97.
  - but no danger of perpetuity where rents applicable as vested interest *de anno in annum*, 89.
  - and trust is valid if beneficiaries can put an end to accumulation within the legal limits, 90.
  - until A. attains 24, and then to transfer to him, A. on majority may demand payment, 689.
- trustee neglecting to comply with direction for, charged with compound interest, 343, 902.
- where directed, and investment, tenant for life has income after one year, 301.

# ACKNOWLEDGMENT.

- debt, of, by one trustee, 259.
- execution of deed, of, 22, 35. See FINES AND RECOVERIES ACT.
- production of documents of title, of right to, 443, 444.
- trust, proof of, by subsequent acknowledgement of trustee, 55.

[The paging refers to the [\*] pages.]

# ACQUIESCENCE. See LACHES.

breach of trust, in, effect of, 922 *et seq.*

infant not bound by, 496, 918.

married woman, formerly not bound by, 496, 789, 918, 925.

*secus* where entitled for separate use without restraint, 496, 919 *et seq.*

quære, where so entitled with restraint, 911, 919, 925, 926.

class persons, by, as creditors or parishioners, 496, 923.

constructive trusts, remedy of *c. q. t.* under, when barred by acquiescence, 186, 864.

purchase in name of stranger, in case of, 170.

creditors, by, in trust deed for them, 496, 513, 514, 522.

definition of, 873, 874.

delay, by reason of, when implied, 197, 495, 496. See LACHES.

direct or indirect, 873, 874.

fluctuating body, by, 496, 923.

infant not bound by, 496, 925.

Limitations, Statute of, does not interfere with the effect of, in equity, 875.

married woman, by, effect of, 496, 911, 918, *et seq.*, 925.

in husband's receipt of separate estate, 777, 778.

meaning of, explained, 874, 923, 924.

remainderman, by, 379, 923.

removal of trustees irregularly appointed, right to, when barred by, 848.

requisites of, 873, 874, 925, 926.

reversionary, where *c. q. t.*'s interest is, 923.

standing by, while expense is incurred, effect of, 874.

trustee, by, delaying to disclaim trust, 197.

# ACT OF PARLIAMENT.

applications by trustees for, 580.

charity, necessary for total alteration of scheme of, 535.

costs of obtaining, 535, 536.

money paid into Court under, treated as land, 950.

investment of, in what securities allowed, 311.

monies voted by, for public services, in hands of Secretaries of State, are not trust funds, 642.

opposition to Bill, costs of, when allowed, 580, 636.

money paid to tenant for life for refraining from, 190.

# ACTING.

acceptance of trust by, 200, 201, 205, 251. See ACCEPTANCE OF TRUST.

disclaimer of trust by acts, 198. See DISCLAIMER.

executor, meaning of expression, 646 note (d).

trustee, meaning of expression, 258, 655, 665.

every trustee who has accepted office treated as, 258, 709; and see 208.

# ACTION.

appeal by trustee is at his own risk, 350.

breach of trust, to prevent, duty of co-trustees to bring, 274.

*cestui que* trust may require trustee to lend his name for, 853.

choses in. See CHOSE IN ACTION.

costs of, trustee when liable for, 350.

Court may direct institution of, 597, 1002, 1038.

debt, for calling in, duty of executor or trustee to bring, 290, 291.

decree or judgment in, takes administration from trustee, 422, 449, 457, 597, 617, 618.

equity to settlement, to enforce, 741, 749.

lapse of time, when barred by, 864 *et seq.* See LIMITATION.

married woman, against, 770 *et seq.*, 793.

by, 759 *et seq.*

[The paging refers to the [\*] pages.]

# **ACTION—continued.**

- new trustees, for appointment of, 1030, 1034.
- protection of trustee, for, 350.
- removal of trustee, for, pleadings in, 847.
- summons, originating, now substituted for, in certain cases, 350.
- tenant for life, powers of, under Settled Land Acts not affected by, 557.
- trustee** the right party to bring, respecting trust estate, 15, 234, 241, 853.
- duty of trustee to see that proper parties are before the Court, 351.
- instituting action for private ends, pays costs, 993.
- instituting action instead of paying into Court under Trustee Relief Act, 350.
- powers of, when suspended by institution of action, 422, 449, 457, 597, 617, 618, 669.
- trustee in bankruptcy, against, to recover trust property, 241.
- validity of act without, which Court would have directed, 573.

# **ADEMPTION, 401 *et seq.***

- codicil republishing will, effect of, 405.
- direction to pay debts does not negative presumption of, 407.
- doctrine of, explained, 401.
- legacy of, by subsequent advance by parent, 401 *et seq.*
- money, legacy of, not adeemed by subsequent settlement of land, 404.
- parents and persons *in loco parentis*, doctrine of, applies only to, 402.
- partial, by advance of less amount than legacy, 404, 405.
- presumption, is matter of, only, 403.
- residuary gift, of, by subsequent advance, 405.
- satisfaction, distinguished from, 401, 408.
- stranger, when benefited by doctrine of, 407, 408.

# **ADMINISTRATION.**

- action for, effect of, on trust for sale, 422; on powers, 422, 449, 457, 597, 617, 618, 669.
- assets, legal, and equitable, 825 *et seq.* See **ASSETS**.
- bankruptcy, in, 831, 832.
- bond, 481
- cæterorum*, to husband, 775.
- charity, of, under Romilly's Act, 929.
- costs of action for, by creditor, 986, 987, 988. See **COSTS**.
- executor ordered to pay, 994.
- lien of trustee prevails over, 639, 640.
- testamentary expenses, are, 644.
- creditors of trustee not entitled to account, 641.
- difficulty in obtaining, when a ground for appointing new trustees, 1027.
- guardian of infants, to, limited to purpose of appointing trustees, 657.
- interest on debts, allowance of, 526.
- letters of, how obtained after successive intestacies, 482.
- what legacies will be paid without taking out, 354.
- limited to trust property, when to be taken out, 224, 657.
- mortgagee, proof by, in administration action, 521.
- order for, Court not bound to make, if questions can be determined without it, 351.
- originating summons in lieu of action for determination of questions in, 350, 620.
- retainer, where executor claims, as to simple contract debt, 831.
- sale, order for, converts property as from its date, 951.
- separate property of married woman, of, 774.
- wilful default, account on footing of, when directed, 905.

# **ADMINISTRATOR. See EXECUTOR.**

- convict's property, of, appointed by Crown, 28, 29.

[The paging refers to the [\*] pages.]

# ADMINISTRATOR—*continued*.

- dealings with, after interval from intestate's death, how far safe, 481, 482.
- de bonis non*, assets vest in, where executor dies intestate, 225.
- office of, may be exercised by one co-administrator, 273.
- purchase of trust property by, not permitted, 490.
- protection of, against creditors, 362
- real estate, cannot sell, though charged with debts, 467, 468.
- receipt of, after lapse of time, 481, 482.
  - where there is charge of debts, 467, 468.
- renunciation of executor and trustee, administrator appointed upon, is not properly a trustee, 204.
- survivorship of office of joint administrator, 261.
- time and trouble, not allowed to charge, for, 628.
- trustee, of, bound by trust, 246, 906.
  - whether he can make a title, 484; may relinquish trust, 672.

# ADMISSION.

- assets, of, is not an admission of right of set off, 701.
- copyholds, to, fine to be paid by trustee on, 235 *et seq.*
  - at what rate where co-trustees, 236.
  - how raised, 379.
- lord cannot refuse admission until fine paid, 235.
- tenant for life and remainderman, how to be borne as between, 378, 379.
- vesting order, with consent of lord, operates as admission, 1025.
- payment into Court, what admission sufficient to found motion for, 977 *et seq.* See PAYMENT INTO COURT.
- set off, objection to, may be waived by admission, 701.
- trust, of, by defendant, 55, 63.

# ADOPTION.

- trust deed, of, by creditor, 513, 522.

# ADULT. See ADVANCEMENT; INFANT.

# ADVANCEMENT.

- infant's legacy, out of capital of, 588.
  - not allowed if a limitation over, 588; but may be, in account between trustee and infant, 589.
  - allowed where cross limitations among children, 589.
- meaning of term, 588 note (b).
- portion, ademption of, by subsequent advance, 401 *et seq.* See ADEMP-TION.
  - advancement to child regarded as, 404. See PORTION.
  - satisfaction of, by subsequent advance, 461 *et seq.* See SATISFACTION.
- power of, advice of Court as to exercise of, how to be obtained, 619, 620.
  - when Court will insert in settlement under executory trust, 127.
  - with consent of tenant for life, how to be exercised when tenant for life becomes bankrupt, 589.
- presumption of, on purchase in name of child, wife, or near relative, 170 *et seq.*
  - adult, where child is, 173.
  - copyholds for lives, on purchase of, 172.
  - daughter, in favour of, 177.
  - evidence to rebut presumption, 175.
    - to support presumption, on part of child, 176.
  - grandchild, in favour of, 177.
  - illegitimate child, in favour of, 177.
  - infant, when child is, 171.
  - joint names, on purchase in, 171, 172.
    - names of father and child, 171.

[The paging refers to the [\*] pages.]

# ADVANCEMENT—*continued.*

names of purchaser, wife and strangers, 178.  
names of stranger and child, 172.

but stranger *qua* his estate is trustee for father, 172.

mother, in case of purchase by, on slight evidence of intention, 178.  
nephew, in favour of, 177.

parol declaration by parent, admissibility of, as evidence, 173, 174.  
personalty, doctrine applies to, 179.

policy of assurance on life of parent in name of child, 179.

possession, continuance by parent in, 173, 174.

previous provision for child, effect of, as rebutting presumption, 173.

purchase money, if not paid, is a debt from estate of purchaser, 178.

receipts, effect of son signing, in parent's name, 174.

relationship of father and child a mere circumstance of evidence, 170  
relatives in whose favour presumption arises, 177, 178.

reputed wife (*e.g.*, deceased wife's sister), does not arise in favour of, 177.

\* reversionary estate, in case of purchase of, 171.

solicitor, relation of, by child to parent rebuts presumption, 179.

stepchild, does not arise in favour of, 177.

stranger, does not arise in favour of, even where purchaser *in loco parentis*, 177.

wife, in favour of, 177, 178.

renewal of lease by parent, who is tenant for life, is not an, 184.

and child is trustee of all or no part, 175 note (*i*).

tenant for life, of, under special power, 589, 590.

# ADVANTAGE.

charity lease should not contain covenant for lessor's private advantage, 542.  
purchase of trust property by trustee set aside though he has not gained, 485. See PURCHASE.

**trustee may not derive**, from trust, 275 *et seq.*; unless accidentally, 282.

as by buying up debts, from game on trust estate, presenting to living, being receiver, trading, &c., 275, 276, 280; retiring from trust in consideration of premium, 668.

application of rule to mortgagees, 277; partners, 277; factor, 280; broker, 280; commission agent, 280; auctioneer, 280; solicitor, 281; agents, 279; guardians, 279; tenant for life, 303, 304.

cannot seek aid of equity under cover of the trust, for his own benefit, 284.

may assert his legal right, 284.

may not lease to one of trustees, 486.

whether trustee may have, on failure of *c. q. t.*, 282.

wrongdoer not allowed to make, by his own wrong, 188, 191.

# ADVERSE POSSESSION. See POSSESSION.

curtesy does not attach where there is, 734.

equitable estate, is available against, 725.

# ADVERSE TITLE.

trustee cannot set up, against his *c. q. t.*, 285.

# ADVERTISEMENTS.

executors by, for creditors under Lord St. Leonards' Act, 362.

trustees, by, selling by auction, 435.

# ADVICE.

counsel, of, trustee acting under, when protected, 207, 346, 347. See COUNSEL.

Court, of, how obtained by trustee, 352, 618 *et seq.*

words of, whether trust is raised by, 134, 135. See IMPLIED TRUST.

# ADVOWSON.

election of clerk to fill, 257; trustees must not vote by proxy *ib.*

[The paging refers to the [\*] pages.]

**ADVOWSON**—*continued*.

heir at law, right of presentation when devolving on, 275.  
 purchase of, on footing of immediate possession, simoniacal, 104.  
 survivorship of right to present, as between co-trustees, 262.  
 tenants in common of, who shall present, 276.  
 trust of, for parishioners, how carried into effect, 85 *et. seq.*, 257.  
 trust to present to, within six months after vacancy, 600.  
 trustee presents but must observe direction of *c. q. t.*, 234, 275.  
 trustees should not purchase, 503.

**AFFIDAVIT**.

distringas, in support of application for, under 5 Vict. c. 5, s. 5, 972, 974.  
 evidence usually given by, under Trustee Acts, 1033.  
 fitness of new trustees, as to, 1021, 1028, 1030, 1031.  
 payment into Court upon, when compulsory, 977 *et seq.*  
 restraining order, in support of application for, under 5 Vict. c. 5, s. 5, 974.  
 trust, evidenced by, within Statute of Frauds, 55.  
 trustees, by, under Trustee Relief Act, 360, 997, 1005.  
     not allowed on application for advice of Court under Lord St. Leon-  
     ard's Act, 618.

**AGENCY**.

agreement, trustee procuring renewal for his own firm held bound by con-  
 structive trust, 186.  
 deed of, 517.

**AGENT**.

**accountable** to trustees only, not to *c. q. t.*, 191, 482, 641, 642.  
     unless quasi-trustee deriving personal benefit, 192, 642; or by accept-  
     ing delegation of trust or fraud, 192, 642.  
*cestui que trust* when regarded as agent of trustee, 881, 882.  
 criminal act of, trustee whether liable for, 294, 295.  
 denying real character may be prosecuted for perjury, 168.  
 disclaiming trustee may act as agent to trust, 198.  
 executor when justified in employing, 256, 264, 633.  
 following money into hands of, rights of principal as to, 894.  
 husband and wife, of, receipt by, of *choses en action*, 740 note (a).  
 lease, agent of trustee may not renew, for his own benefit, 182.  
 lien, agent has not any, upon trust estate for charges, 641.  
     though trust be to pay expenses in first instance, 641.  
     *secus* where positive direction to employ particular agent, 253, 254, 641.  
 Limitations, Statutes of, when entitled to plead, 901.  
 management, for, purchase by, 486.  
 negligence of, trustee not liable for, 638.  
 notice to, must be to actual, not to possible, agent, 708; and see 709.  
 production of accounts kept by, 976.  
 profiting by agency, is constructively a trustee, 187, 191, 279, 486.  
 purchase by, in own name not provable by parol to be for another, unless  
     part of consideration paid by employer, 168.  
     when improper, 476, 490.  
 purchase money, payment of, to agent of trustee, 435, 447, 448.  
 security from, trustee or executor not required to take, 256.  
 town agent, country solicitor defending suit by, allowed agent's bill al-  
     though trustee, 282.  
**trustee** after disclaimer may be agent to trust estate, 198.  
     one trustee may act as, in some cases for another, 254.  
     may employ, on proper occasions, 254, 435, 632.  
     *c. g.*, broker, 255; collector of rents, bailiff, attorney, 632, 633,  
     637; collector of debts, 632, 633.  
     where special direction by testator, 253, 254.  
 paying to agent, cautions to be observed by, 352, 353.

[The paging refers to the [\*] pages.]

**AGENT**—*continued*.

for sale, cannot buy as agent for another, 486.

may employ agent, 435; but not to receive purchase money, 435, 448.

trustee, of, cannot buy for himself, 486.

West Indies, for management of estate in, 628.

**AGRICULTURAL HOLDINGS (ENGLAND) ACT.**

charity trustees exercising powers of, require consent of Commissioners, 547.

improvements under, application of trust monies in, 563, 564.

by tenant not to be taken into account in estimating best rent, 595.

right of tenant to compensation for, 596.

married woman, powers of, in respect to land, under, 793, 794.

**ALIEN.**

cestui que trust of real estate, formerly could only be till office found, 44,  
*secus* since 33 Vict. c. 14, 45.

chattels personal, alien enemy not competent to hold, 27; but see 33 Vict.

c. 14, 26; alien friend may, and may create trust, *ib.*

devise to, and to British subject, upon trust, 40.

executory trust for, Court would not give effect to, in favour of Crown, 45.

husband not entitled to curtesy, 733.

lands, may acquire by purchase, but formerly not by descent or operation  
of law, 26, 45.

purchasing, could hold until office found, 26, 44.

could not sue or be sued touching lands, 40.

may now acquire and hold real and personal property, 27, 40, 45.

Naturalization Act, 1870, provisions of, as to, 27, 40, 45.

office or franchise, not qualified for, by Act of 1870, 27.

proceeds of sale of real estate, could take, 45, 950.

protector of settlement, cannot be appointed, 382.

trust, how far he can create of real estate, 26.

of real estate for, 44, 823, note (b).

could be enforced as against all but Crown, 44.

formerly Crown could claim benefit without previous inquisition,  
96.

trustee of freeholds or chattels real, formerly could not be, 40

*secus* since 33 Vict. c. 14, *ib.*

of chattels personal, may be, 40.

when appointed by Court, 1031.

trustee of real estate for, Crown could sue, in equity, 45

will, power of, to dispose of property by, 27, note.

**ALIENATION.**

bankruptcy, when an "alienation," 102.

charity estates, of, when permitted, 539 *et seq.* See CHARITY.

corporation, by, 22, 31.

enlargement of estate is not an, 784.

gift until, or gift over upon, 101 *et seq.*

what assignment occasions a forfeiture, 102.

insolvency, when an "alienation," 103.

limitation over in event of, effect of, 101 *et seq.*

marriage of *feme*, how far an alienation of her *chose en action*, 102.

meaning of term, 102, 784.

partial restraint upon, whether valid, 102.

powers, whether trustee can exercise, after alienation of estate, 608 *et seq.*

whether tenant for life can, 668.

restraint against, trust imposing, inoperative, 98 *et seq.*, 689, 693.

*secus*, restraint against anticipation as to separate property of married  
woman, 693, 754 *et seq.*

tenant for life, by, under Settled Land Acts, 553, 555. See SETTLED LAND  
ACTS.

[The paging refers to the [\*] pages.]

# ALIMONY.

inalienable character of, 750.

# ALLOTMENT.

new shares, of, 596.

# ALLOTMENTS EXTENSION ACT, 1882, 540, note (e).

# ALLOWANCE.

contract for, trustee may make, specially, 631, 632.

expenses, of, to trustee, 634 *et seq.* See EXPENSES.

improvements, for, to trustee, 491, 492, 493, 544, 546, 575 *et seq.*

to trustee who has purchased trust estate, 491, 493.

interest, of, to trustees, 577, 637, note (d). See INTEREST.

just allowances, direction for, when inserted in decree for account, 278, 890.

trustees in bankruptcy, to, 634, note (e).

maintenance of infant, for, 582.

skill and exertions in business, for, 630.

time and trouble, for, to trustees, Chap. xxiv. sec. 1, 627—634.

# AMERICA. See JURISDICTION, WEST INDIES.

# AMERICAN SECURITIES, 295.

# ANNUITANT.

contribution by, to fine on renewal of lease, 184.

# ANNUITIES.

Government or Bank annuities, investment of trust money in, 308 *et seq.*

# ANNUITY.

express trust, secured by, arrears of, what recoverable, 883, 884.

forfeiture of, on alienation, &c., 103.

investment of fund to provide for, in East India Stock, 311.

purchase of, in name of stranger, gives rise to resulting trust, 163.

purchase of, may be waived by *c. q. t.* 574, 690.

trust money ought not to be lent upon, 319.

trustee, to, for time and trouble, 637.

trustees in lieu of purchasing, may pay sum down, 574, 690.

vesting order, when made without service on annuitant, 1034.

# ANSWER.

Chancery, in—

costs of trustee disclaiming by, 198.

declaration of trust, may constitute, under Statute of Frauds, 55, 56.

but plaintiff must read from it the terms of the trust, 56.

disclaimer by, is not a renunciation of probate, 223.

Limitations, Statute of, might be pleaded by, 356, 869.

married woman, of, having separate property, 759, 760.

payment into Court when directed on admission in, 977 *et seq.*

suppression or chicanery in, visited with costs, 993.

vendor, by, to requisitions of purchaser, 459.

# ANTICIPATION, RESTRAINT AGAINST, 754 *et seq.* See MARRIED WOMAN.

# APPEAL.

costs, for, by trustee, 990.

County Court, from, in charity cases, 932.

Court of, constitution of, 17.

trustee, by, from decree is at his own risk, 350.

not allowed from direction of Court under Lord St. Leonards' Act, 619.

# APPLICATION OF PURCHASE MONEY.

trustees, by, purchaser when bound to see to, 451 *et seq.* See RECEIPT.

# APPOINTMENT. See POWER.

execution of power prevents resulting trust to settlor, 153.

fraudulent, 616, 686. See POWER.



[The paging refers to the [\*] pages.]

**APPOINTMENT**—*continued*.

- married woman, by, under power makes property liable for debts, 919 *et seq.*
- new trustees, of, 655 *et seq.*, 846 *et seq.*. See **NEW TRUSTEES**.
- under Trustee Acts, 1027 *et seq.*. See **TRUSTEE ACTS**.
- perpetuity, when void for, 98.
- power of, authorized by "usual powers" in executory trust, 127, 128.

**APPORTIONMENT**.

- capital and income, as between, 305, 565, 566, 682, 683, 914, 915.
- charities, between, of funds intermixed, 895, 896.
  - of pure and impure personalty in bequest to, 951.
- charities, of, between divided parishes, 929.
- costs, of, in action against executor of defaulting executor, 992.
  - on appointment of trustees of two funds, 1038.
- dividend in bankruptcy, of, between tenant for life and remainderman, 914.
- dividends, in respect of, on change of investment, in favour of tenant for
  - \*life, 323.
  - on appointment of new trustees, 1014.
- finances for renewal of leases, of, 184, 371 *et seq.*, 682. See **RENEWABLE LEASEHOLDS**.
- purchase money, of, as between tenant for life and remainderman, 430, 565, 566.
  - by trustees of limited interest, 430, 594.
- reversionary interest, of proceeds of, as between tenant for life and remainderman, 305, 565, 566.

**APPROPRIATION**.

- legacy, of, by executor permitted without suit, 204, 205, 581.
- payments, of, as between *c. q. t.* and trustee, 895.
- residue, of, by trustees or executors, 592.
- specific, what amounts to, so as to create trust, 83, 894. See **SPECIFIC APPROPRIATION**.

**ARBITRARY POWER**, 600, 612, 613. See **POWER**.

**ARBITRATION**.

- power of trustees to submit claim to, 591, 592.

**ARMY AGENT**.

- notice to, of charge on proceeds of officer's commission, 708.

**ARREARS**.

- pin money, of, 777, 778.
- rent, of, what recoverable under Statutes of Limitations, 875, 882 *et seq.*
- separate estate, of, 758, 776 *et seq.*, 787. See **MARRIED WOMAN**.

**ARTICLES, MARRIAGE**.

- executory trusts in. construction of, 112 *et seq.*. See **EXECUTORY TRUST**.
- money to be laid out in land where bound by, 939.
- notice of, how far binding upon purchaser, 860, 861.
- renewable leaseholds, of, direction to renew implied in, 365.

**ASSENT**.

- executor, of, to legacy, 205, 477.

**ASSETS**. And see **EXECUTOR**.

- administration of, 825 *et seq.*; in bankruptcy, 831, 832.
- admission of, is not admission of right of set off, 701.
- conversion of, within what time to be made, 289, 299.
- copyholds were formerly not, 825.
  - unless blended with freeholds in one mortgage, 800 note (1).
  - secus* now under 3 & 4 Wil. 4, c. 104, 827.
- denial of, improperly, by executor, 993.
- decrees, priority of, in administration of, 830 note (f).
- debts, duty of executor to provide for payment of, 509.

[The paging refers to the [" pages.]

# ASSETS—continued.

- descent, by, 10, 825.
- devastavit, 251, 356, 357, 479. See EXECUTOR.
- effect of 3 & 4 Will. 4. c. 104, as to, 829, 830.
- equitable, what are, 825, 828.
  - land, charged with debts or devised upon trust for payment of debts, 825.
  - separate property of married woman, 773.
  - true test for determining what are, 825.
  - whether trust of chattels is, 827.
    - of fee, 828 *et seq.*
- equity of redemption is, 827.
- escheat, real estate devolving on lord by, is assets, 240.
- executor, not liable for debt of, except in special case, 225.
- executor, in hands of, a species of trust property at common law, 224.
- executor of executor, vest in, but not in administrator, 224, 225.
- executrix, married woman, may appoint executor, 225.
  - husband of, might dispose of assets during coverture, 225.
    - secus* now, under Married Women's Property Act, 1882, 225 note (b).
- failure of *c. q. t.*, on, vest in Crown, 285.
- Frauds, Statutes of, sect. 10, under, 827.
- Indian, conversion of, 335.
- interference with, by executor, is acceptance of office, 203.
- judgments, priority of, in administration, 825, 830 note (f).
- legal, what are, 825.
  - whether trust in fee devised is, 829.
- married woman, property appointed by, when available as, 919 *et seq.*
- money to be laid out in lands not considered personal assets, 941.
- mortgage of, by executor, 477 *et seq.*
- outstanding, executor should not allow, to remain, 296 *et seq.*
- sale of, by executor, 477 *et seq.*
- trade, following assets employed in, 894, 916.
  - liability of trustee or executor employing assets in, 339, 340, 342, 479.
  - interest, when charged, 340. See INTEREST.
- trust held to be, in hands of heir, 10.
  - chattels, of, always accounted assets in equity, 826.
    - whether so freeholds before Statute of Frauds, 827.
    - Act did not extend to complicated trusts, 827.
  - under statute 3 & 4 Will. 4. c. 104, 827 *et seq.*

# ASSIGN, ASSIGNEE.

- bankrupt, of. See BANKRUPTCY.
- cestui que trust, of, may call for transfer of legal estate, 692.
  - takes subject to equities, 695 *et seq.*
  - precautions to be taken by, 704.
- devisee of trustee, whether an "assign," 231, 232.
- husband, of, when bound by wife's equity to settlement, 739, 742 *et seq.*
- personal representative to be deemed an "assign," within the meaning of all trusts and powers, 233.
- power, discretionary, when assign can execute, 603.
- power of sale in mortgage, when assigns can execute, 431, 603.
- receipt by assignee when a discharge, 346.
- set off against assignor when binding on assignee, 698.
- trust, when assigns can execute, or sign receipts, 231, 232.
- trustee, of, originally not bound by a use, 2.
  - but afterwards held bound, 2, 15, 16, 246; whether in the *per* or *post*, 16, 246.
  - except purchaser for value without notice, 16.

[The paging refers to the [\*] pages.]

**ASSIGN, ASSIGNEE**—*continued*.

- rents and profits, account of, directed against, 890.
- trusts confided to trustee "and his assigns," effect of, 231, 232.
- voluntary assignment, notice of trust presumed against person claiming under, 16.

**ASSIGNMENT.** See **CONVEYANCE**.

- act of bankruptcy, when constituting, 511, 512, 513, 514.
- breach of trust, of right to sue for, 692, 900.
- cestui que trust, interest of, formerly not assignable, 3.
- chattels real, of, 650, 651.
- chose in action*, of, 72, 446, 447, 712, 713. See **CHOSE IN ACTION**.
- debt, of, effect of, 697 *et seq*.
- definition of, in Settled Land Act, 556.
- equitable interest**, of, how made, 692 *et seq*.
  - when effectual, 73, does not operate merely by way of contract, 73.
  - anciently not permitted, 8.
  - notice of, when, to whom and how to be given, 701 *et seq*. See **NOTICE**.
  - distinction in this respect between real and personal estate, 704, 705.
  - writing when necessary for, 693.
- forfeiture when created by, under clause divesting property on alienation, 103.
- fraudulent, when. under 13 Eliz. c. 5, 510, 518.
- fund in Court, of, what enquiries and notice proper, 711.
  - stop order on, 711.
- impeachable, trustee may assume validity of, 346.
- leaseholds, of, by trustee or executor, right to indemnity on, 185, 238, 445, 446.
- married woman, by, of separate property, 773.
- merger of charge, to prevent, 727, 731. See **MERGER**.
- new trustees, to, of chattels real, 650, 651.
- notice of, when necessary, 72, 701 *et seq*. See **NOTICE**.
  - equitable interest perfectly transferred without, 74, 701.
  - equivalent, as against trustee, to taking possession, 345.
- power, of, 607, 608.
- proviso against, effect of, 101 *et seq*.
- tenant for life, by, does not affect his exercise of powers under Settled Land Acts, 555.
- tenant in tail, by, 693.
- trustee or executor, by, beneficially interested and indebted to estate, 686, 687.

**AT HOME.**

- land to be converted into money, when so considered, 949, 950.
- money to be laid out in land, when, 944, 946.
- trust for sale not determined when all *c. q. t. sui juris*, 425.

**ATTACHMENT.**

- debt, of, does not affect debts vested in garnishee upon trust, 225, 245.
  - but money may be ordered into Court pending inquiry as to trusts, 245.
  - must be of actual debt, 815.
  - but debt need not be due, 815.
  - when complete, as against trustee in bankruptcy, 815, 816.
- defaulting trustee, when liable to, under Debtors Acts, 916 *et seq*.

**ATTAINDER.**

- cestui que trust, of, 284.
- effect of, 27, 818 *et seq*.
  - relates back to time of offence, 27.
- trustee of, 250.
  - does not work forfeiture of trust estate, 1036.

[The paging refers to the [\*] pages.]

**ATTENDANT TERM.**

attended inheritance gained by disseisin, 250 note (1).  
trust of, followed devolution of freeholds, 95.

**ATTESTED COPY.**

trustee not entitled to, of settlement, 670.  
when to be given to purchaser by trustees of bankrupts and trustees for sale, 442, 443.

**ATTESTING WITNESS.**

to a will being a trustee of a legacy, 275 note (c).

**ATTORNEY.** See SOLICITOR.

executor, of, allowance of expense of employment of, 633.  
fraud by, 191.  
infant cannot be, in action, 37; but may, to deliver seisin, *ib.*  
married woman, whether infant or not, may appoint, 39.  
power of,  
  appointment of attorney under, distinguished from delegation of trust, 258.  
  assignment of *choses in action*, on, 446, 447.  
  Conveyancing Act, 1882, provisions of, as to irrevocability, &c., of, 353, 354.  
  dividend to receive, 684.  
  forged, trustee paying under when liable, 353.  
  infant can deliver seisin under, 37.  
  purchase-money, to receive, 447, 448.  
  receipt clause in, effect of, 453.  
  trustee or executor signing, liability of, 202, 207.  
  trustee paying under, when exempt from liability, 354.

**ATTORNEY-GENERAL.**

compromise with consent of, allowed in case of charities, 935.  
costs not responsible for, 927.  
Fraudulent Trustee Act, must sanction prosecution under, 898.  
information in name of, 927.  
  when proper form of action, 31, 86, 927.  
*parens patriæ*, his duty as representing, 927, 931.  
petition under Romilly's Act, his allowance of, 928.  
  he must be a party to proceedings under, 930.  
  may correct his judgment, 930, 931.

**AUCTION.**

sale of trust property by, 423, 434, *et seq.* See SALE.  
trustee cannot purchase trust property at, 484, 485.

**AUCTIONEER.**

agent of trustees selling, is, 448.  
trustee who is, cannot make profit from trust, 280.

**AUGMENTATION.**

loans, of, under charitable gift, powers of trustees as to, 538, 539.  
number of trustees, of, 659, 663, 664, 1029.  
salaries, of, powers of trustees as to, 538.

**AUSTRALIA.**

law of, as to wife's *choses in action*, 348.

**"AUTHORIZING AND EMPOWERING."**

may raise a trust, 131.

**AUTHORITY.**

bare, to several, determines by death of any, 261.  
  but *secus* if coupled with interest, *ib.*  
to receive moneys, how given by *c. q. t.*, 352.  
trustee should see to genuineness of, when paying to agent, 353.

[The paging refers to the [\*] pages.]

**AVERMENT.**

- trust of, permitted at common law, 51.
- not upon a bequest, 60.
- how far as against an executor, 60.
- not in contradiction of intention expressed or implied upon written instrument, 51, 52.
- not where deed is necessary to pass legal estate. 52.
- use, of, 51, 52.

**BAILIFF.**

- infant cannot be, 37.
- mortgagee or trustee may employ, 632, 633.

**BALANCE.**

- cost of executor improperly retaining, 992.
- excessive, trustees must not keep, at bankers, 297.
- interest on, allowed on further directions, 905.

**BALLOT.**

- election by, unknown to common law of England, 88.
- election of clerk under trust of advowson for parishioners should not be by, 88.

**BANK.**

- balance, trustees keeping excessive, at bankers, held liable, 297, 339.
- deposit of plate, &c., in bank, by trustees, 295.
- failure of, trustees when liable for, 297.
- lien of, on shares in names of trustees, 715.
- notes treated as cash, 893.
- whether earmarked, 240, 241, 892, 893.
- securities deposited with, how affected by bankruptcy of bankers, 244.
- shares in, belonging to testator, duty of executors to convert, 289.
- new, trustees cannot accept, unless expressly authorized, 596.
- trust monies** may be deposited in, temporarily to trust account, 295.
- but not otherwise, 296; nor out of trustees control, 296.
- paid into; to trustee's private account, presumed to be traded with, 340.
- and interest thereon charged at 5 per cent., 340, 342 *note*.
- how followed, 244, 864, 895.
- transmission of, through bank, justifiable, 256.
- but lodgment should be to trust account, 256.
- trustees, payment of money to joint account of, at bank, should be made where practicable, 292, 447, 448, 474.

**BANK ANNUITIES.**

- execution, may now be taken in, 773.
- investment in, when proper, 308, 314 *et seq.*
- considered equivalent to payment of portion, 418.
- transfer into more than four names not usually, allowed, 43.
- vesting of, in new trustees, 650, 652.

**BANK OF ENGLAND.**

- annuities, investment in, when proper, 308, 314 *et seq.* See **BANK ANNUITIES**.
- indemnity to, on complying with the orders under Trustee Acts, 1021, 1043.
- party to action when to be made, 971.
- stock, trustees may now invest on, 308 *et seq.*
- trustee of stock, cannot be, 32.
- Trustee Act, bound by orders under, 1020, 1021, 1024, 1043.
- trusts, cannot be compelled to notice, 32.
- will need not now be entered or registered at, 32.

**BANK STOCK.**

- government security, is not 307.
- investment in, by trustees, when proper, 308 *et seq.*
- liability of trustees investing in, by mistake, 307.

[The paging refers to the [\*] pages.]

# **BANKER.**

following trust money into hands of, 894, 895.  
neglect of, liability of trustee for, 337.  
not accountable for sale of stock by executor's order even when misapplication probable, 482, 483.  
payment of money to co-executor who was banker of testator, 253, 291.  
securities deposited with, when devolving on trustee in bankruptcy, 244.  
set off, right of, as between banker and customer, 698, 699, 700, 895.  
trustee who is, cannot profit by the trust, 280.

# **BANKRUPT.** See **BANKRUPTCY.**

# **BANKRUPTCY.**

act of, assignment for benefit of creditors, by making, 511, 512, 513, 514.  
administration of assets by Court of, under recent Act, 831, 832.  
transfer of action for, 832.  
alienation, clause divesting property on, does not extend to involuntary bankruptcy, 102.  
but does to petition for liquidation, 104.  
annulled, does not cause forfeiture under clause of forfeiture on bankruptcy, 102.  
**assignment of whole property** to secure past debt, an act of bankruptcy, 511.  
or if in fraud of creditors, 511.  
of all but colourable part or of necessary stock in trade, 511.  
valid where no existing debts, 512; and as between parties to it, 512.  
where invalid under late Bankruptcy Act, 514.  
if not enforceable, not an act of bankruptcy, 512.  
by trader of part of property not an act of bankruptcy, 513.  
unless he contemplated bankruptcy, 513.  
void at law may be good in equity as to parties to it, 513.  
**certificate of discharge** formerly barred trust debts, 915.  
but bankrupt trustee bound to see that proof was made, 915.  
debt by fraudulent breach of trust not barred by, 916.  
chattels in possession of trustee how affected by, 242.  
clause divesting property on, effect of, 102 *et seq.*  
contribution by co-trustee of bankrupt, trustee in bankruptcy may recover, 916.  
co-trustee, of, proof against estate, how to be made, 915.  
covenant to settle future property, avoidance of, 78.  
discharge of bankrupt, trust debt how far barred by, 915, 916, 992.  
disentailing deed of wife's land, husband notwithstanding bankruptcy can concur in, 780.  
district courts, jurisdiction of, in charities whose income is under £30, now £50, 852 note (d), 932.  
*elegit*, writ of, goods not to be taken in execution under, 795.  
equitable debt will now support petition in, 906.  
equity to settlement of married women, as against trustee in bankruptcy, 742.  
execution creditor, how affected by debtor's, 815, 816.  
firm, of, in which trustee is partner, effect of, 913, 914, 916.  
forfeiture on, under clause divesting property in event of, 102 *et seq.*  
under order and disposition clauses of Bankruptcy Act, 242 *et seq.*  
fraudulent conveyance under 13 Eliz. c. 5, 510, 518.  
is act of bankruptcy, 512, 514.  
fraudulent preference, 513, 514, 515 note (a).  
fraudulent trustee, of, 992.  
heirlooms not forfeited on bankruptcy of tenant for life, 683.  
judgment creditor how affected by debtor's, 814.

[The paging refers to the [\*] pages.]

# **BANKRUPTCY—continued.**

legacy duty payable in respect of debts proved, of which payment is directed by will, 520.

**limitation over**, on, or until, 101 *et seq.*

settlor cannot so limit over his own property, 104.

except on marriage to extent of portion received with wife, 104.

or where there is a limitation over in favour of wife or children, 105.

maintenance, trust for, trustee in bankruptcy how far entitled under, 99 *et seq.*, 690.

married woman cannot be made bankrupt unless trading separately from husband, 790, 791.

lending money to husband, postponed to other creditors, 791.

new trustee, appointment of, on bankruptcy of trustee, 658, 850.

under Bankruptcy Act, 1883, 850.

non-trader formerly not amenable to bankrupt laws, 510.

**order and disposition of bankrupt**, property in, 242 *et seq.*

cestui que trust tenant for life and bankrupt, 683.

notice of assignment, importance of, 702.

"true owner," whether trustee or *c. q. t.*, 244, 245.

trust chattels in hands of bankrupt executor, factor, or trustee or not within clauses as to, 244.

*secus*, where executor has assumed to be absolute owner, 244.

where goods are in possession of bankrupt according to the title, 243.

**petition in**, mere trustee for absolute owner cannot sustain, 245 note (c).

**proof in bankruptcy**.

breach of trust, for, against estate of bankrupt trustee with interest, 912.

investment by trustee in improper securities, in respect of, 913.

lien on bankrupt's beneficial interest not waived by trustees proving, 912.

*secus* in case of proof by executor, 912.

mortgagee, by, 521.

partners of trustee, trust debt when provable against, 913, 916.

release given to one co-trustee, effect of, 915.

set off where bankrupt trustee interested in trust fund, 912.

stock improperly sold by trustee, in respect of, 912.

tenant for life and remainderman, apportionment as between, 914, 915.

trustee, by, should be, except where trust simple, 234.

generally should be by *all* trustees, 259.

bankrupt trustee how far liable in equity if he does not prove, notwithstanding certificate, 915.

**trustee in bankruptcy of**, 912 *et seq.*

where trust estate amalgamated with that of bankrupt, 241.

where bankrupt trustee one of several trustees, 915.

where trustee one of a bankrupt firm, 913, 916.

where co-trustees severally bankrupt, 915, 916.

set off in bankruptcy of trustee, 912, 913.

settlement of future property, contract for, avoided, 80.

surplus assets, bankrupt may declare trust of, 26.

tenant for life, of, effect of, as to powers exercisable with his consent, 589.

tenant for life, of, heirlooms not forfeited on, 683.

trade, trustee carrying on, is amenable to bankrupt laws, 238.

trader, distinction between, and non-trader under old bankruptcy laws, 510.

abolished under recent Act, 514.

trader, goods in order and disposition of, pass to trustee in bankruptcy, 242, 243.

**trustee, bankruptcy of**.

bankrupt not absolutely disqualified from being trustee, 40, 658, 847 note (c), "unfit" but not "incapable," 658.

appointment of new trustee in place of, 658, 850, 1027, 1028.

† 23 LAW OF TRUSTS.

[The paging refers to the ["] pages.]

# **BANKRUPTCY—continued.**

costs, bankrupt trustee when entitled to, 991, 992.

injunction against bankrupt trustee, 855, 856.

proof in, by *c. q. t.*, 234, 912. See *supra*, **proof**.

receiver, is ground for appointment of, 982.

set off against costs payable to defaulting trustee, 635.

trust property not affected by, 239, 240.

followed, may be, though tortiously converted, if capable of being identified, 240; or if money payable at future day, 241.

## **trustee in bankruptcy.**

action against, in whose name it must be, 241.

in case of factor, 241.

auction, cannot buy in it, without authority of creditors, 437.

bankrupt trustee, of, may compel contribution by co-trustee, 916.

following trust monies into hands of, 240 *et seq.*

husband, of, is affected by wife's equity to settlement, 742.

interest, charged with, for balances improperly retained, 338.

just allowances to, 634 note (*e*).

legal estate, taking, bound by trust, 247.

whether passes to, when bankrupt has beneficial interest, 242.  
or where trust is doubtful, 242.

notice of assignment by, necessity for, 703.

priority as against, by giving notice, 703.

production of title deeds by, 442, 443.

property of bankrupt vests in, 26.

purchase by, from first mortgagee does not let in second mortgagee, 728.

purchase of bankrupt's estate by, not allowed, 489.

trust property, following, into hands of trustee, 241, 242.

undue preference of creditor, 513, 514.

voluntary settlement, when avoided by bankruptcy of settlor, 80.

**BANKRUPTCY ACT, 1883** (46 & 47 Vict. c. 52), 514, 1028. See **STATUTES**.

# **BARE TRUSTEE.**

bare trust distinguished from trust coupled with an interest, 611.

married woman being, may convey as *feme sole*, 36.

meaning of term, 221 note (*g*).

protector of settlement, when he may be and duties of, 382.

whether "true owner" within order and disposition clauses, 244.

# **BEARER.**

securities payable to, custody of, 295.

**BENEFICE.** See **ADVOWSON**; **PRESENTATION**.

**BEQUEST.** See **LEGACY**; **LEGATEE**.

assent to, by executor, 205, 477.

personal estate, of, how made according to Statute of Frauds and under present law, 57 *et seq.*

passes proceeds of land subject to trust for conversion, 949.

residuary, 158, 159. See **RESIDUE**.

# **"BESEECHING."**

may raise a trust, 131.

# **BID.**

leave to, at sale, not generally given to trustee, 489.

# **BILL IN CHANCERY.**

appointment of new trustees, bill for, formerly necessary, 671.

but not where suit pending, 672.

declaration of trust, whether sufficient to prove, 56 note (*a*).

omitting to pray for interest, 338.



[The paging refers to the [\*] pages.]

# **BILL IN PARLIAMENT.**

application for, by trustees, 580.  
money paid to trustees for not opposing, how treated, 190.  
opposition to, by trustees, 580.

# **BILL OF EXCHANGE.**

distinguished from money and bank notes, 892.  
followed in equity, when, 893.  
married woman, by, binds separate estate, 761, 763.  
trover for, sent to factor, whether it should be against factor or principal, *qu.* 241.  
trust money may be transmitted by, 256.

# **BONA VACANTIA, 161, 285.**

# **BOND. See COVENANT.**

administration bond, 481.  
assignee of, bound by equities affecting assignor, 698, 699.  
cohabitation, to induce, invalidity of, 106 note (*b*).  
indemnity, of, whether trustee should take 349.  
on appointment of new trustee against breach of trust, 359, 668.  
married woman, by, binds separate estate, 761, 762, 763.  
penalty in, creditor cannot claim beyond, 527.  
satisfaction of, as between parent and child, 406. See SATISFACTION.  
stranger, in name of, presumption of resulting trust on taking, 163.  
trustee, by, for due execution of trust, 252.  
voluntary, creates a debt, 81, note (*f*); how payable out of assets, *ib*.

# **BONUS.**

Bill in Parliament, for not opposing, 190.

# **BORROWING.**

directors of company, by, in excess of powers, 595.

# **BOX.**

securities kept in, by trustees, 295.

# **BREACH OF TRUST. Chaps. XXIX., XXX., 846—937.**

accident, not excused by, in case of misfeasance, 907.  
account in respect of, when granted on footing of wilful default, 904, 905.  
accumulate, neglect of trustee to, 343, 902.  
acquiescence in, by *c. q. t.*, 922 *et seq.*, See ACQUIESCENCE.  
agent, by, 894, 901. See AGENT.  
agent, by employment of, 256. See AGENT.  
assignment, mere right to sue for breach of trust is not capable of, 692, 900.  
assuming to act as trustee, effect of, 904:  
bankruptcy, proof in, against bankrupt trustee, 912.  
in case of co-trustee, 915. See BANKRUPTCY, proof in.  
cestui que trust concurring in, liability of, 910.  
stopping partial interest of, 911.  
charitable trusts, remedy for breaches of, 927 *et seq.* See CHARITY.  
compensation for, on what principle awarded, 907.  
compromise of action for, jurisdiction of Court to sanction, 926.  
concurrence in, by *c. q. t.*, effect of, 495, 496, 918 *et seq.*  
confirmation of, by *c. q. t.*, when effectual, 497, 498.  
contribution between co-trustees, 909, 910, 916.  
conversion of securities, by neglect to make, 289, 298. See CONVERSION.  
tortious, of trust property, 892.  
copyholds, co-trustee of, releasing, to avoid payment of fine, 237.  
corporation, proceedings against, in respect of, 530, 531, 902.  
costs of action for, how to be borne, 909, 989 *et seq.*  
co-trustee, allowing, may be removed, 847.  
bond of indemnity against, 349, 359.

[The paging refers to the [\*] pages.]

# **BREACH OF TRUST—continued.**

- duty of, in case of, 273, 274.
- following trust property into hands of, 897.
- permitting money to lie in hands of, 265.
- proceedings against, 897.
- responsibility of, *inter se*, and to *c. q. t.*, 908 *et seq.*, 918.
- covenant, neglect by trustee to enforce, 902, 903.
- criminal proceedings for, 898.
- debt, constitutes simple contract, 205, 906.
  - secus* where trustee has signed the deed and it amounts to a covenant, 205, 206, 906.
  - will now support petition in bankruptcy, 906.
- Debtors' Act, defaulting trustee within exception in sec. 4, 900 note (b).
- deceased trustee, representative of, liable, 906.
  - unless he has distributed assets under sanction of Court, 906.
- delegation of duty, by, to strangers, 252; or attorney, or solicitor, 255, 256; or even co-trustee, 252, 257.
- depreciation of property, trustee when liable for, 907.
- devastavit by executor is a, 357.
- directors of company, by, 901, 903, 904.
- equitable debt, constitutes, 906.
- executor when liable for, 906. See EXECUTOR.
- express trust, action for breach of, not barred by Statutes of Limitations, 901, 902.
- factor, by, 874.
- firm, trust money received by, 902, 909.
- following trust property in case of, Chap. xxx., sect. 1, 857—892.**
  - assets employed in trade, 894.
  - bank notes, bills, &c., 892.
  - banker, into hands of, 895.
  - charity, funds of, mixed with funds of other charities, 895, 896.
  - chattels, 893.
  - co-trustees, into hands of, 897.
  - disseisor, into hands of, 250, 723 *et seq.*
  - doubtful equity, purchaser how far bound by notice of, 860.
  - legatee, into hands of, 906.
  - money, 862, 892 *et seq.*
    - fraud, obtained by, 897.
  - invested by trustee in land, 896.
    - where trust money is only part of the purchase money; *c. q. t.* has lien for trust money and interest, 897.
    - where it is the entirety *c. q. t.* may take land itself, 897.
  - lent for, specific purpose, 894.
  - mixed with trustee's money, *c. q. t.* has lien on the whole, 894.
  - paid into bank to simple account with trustee, 894, 895.
- mortgagee, into hands of, 861.
- next of kin, into hands of, 906.
- partners of trustee, into hands of, 913, 914.
- property substituted for trust estate, 892 *et seq.*
  - where conversion tortious *c. q. t.* has lien as against trustee or those who represent him in right, 892.
- purchaser, into hands of, 858 *et seq.*, 893.
  - with notice, 858, 859.
  - without, 858, 859.
  - chose in action*, of, 862.
- time within which estate may be followed, 863 *et seq.*
- volunteer, into hands of, 857.
- fraudulent, not released by discharge in bankruptcy, 992.

[The paging refers to the [\*] pages.]

**BREACH OF TRUST, following trust property in case of—continued.**

fraudulent preference, trustee making good trust fund does not commit, 897.  
fraudulent trustee, criminal proceedings against, 898.

ignorance of trustee, when an excuse for, 904.

cestui que trust, of, when an excuse for laches, 926. See **IGNORANCE.**

imaginary value, trustee not charged with, 908.

indemnity clause, trustees when exempted from responsibility by virtue of, 274, 275.

**infant not liable for, 39.**

unless he has contrived a fraud, 39.

cannot acquiesce or concur in, 918 *et seq.*

injunction to restrain, right of *c. q. t.* to, 855, 856.

innocent trustee, right of against co-trustees, 909.

insufficient security, realization of, not directed in absence of *c. q. t.* 908.

insurance, neglect by trustee to keep up, 903.

notice to office, neglect to give, 903.

policy, improperly parting with custody of, 903.

interest when and at what rate charged against trustee guilty of, 338 *et seq.* See **INTEREST.**

investment, improper, by making, 334 *et seq.* See **INVESTMENT.**

knowledge of, and abstinence from suing whether a bar to relief, 922 *et seq.*

laches, relief when barred by, 495, 496, 901, 923.

land, by tortious sale of, 902.

lease, improper, of charity lands, 542 *et seq.*

**liability for, trustee not charged with imaginary values or more than he received, 908.**

except where great negligence, &c., *ib.*

husband, of, for wife's breaches of trust, 33

loser by breach, trustee nevertheless liable, 907.

representative of deceased trustee, when liable, 906.

set off, of gain in one fund against loss in another, not allowed, 907, 908.

trustee primarily liable but has his remedy against *c. q. t.* gaining by breach of trust, 910.

one gaining indirectly not primarily liable to co-trustees who were parties to the breach, 910.

**lien of *c. q. t.*, on property substituted for trust property, 892 *et seq.* See *supra*, following trust property.**

of trustee on beneficial interest of *c. q. t.*, 910.

on legacy of co-trustee for amount of contribution, 910, 912.

on policy for premiums advanced, 903.

limitation of action for, 897, 900 *et seq.*, 906, 922.

loan, improper, borrower how affected by notice, 862.

loss, involuntary, trustee when liable for, 907 *et seq.*

married woman, by, husband liable for, 33; except in cases within Married Women's Property Act, 1882, *ib.*

liability of her separate property in respect of, 768 *et seq.*, 787, 919 *et seq.*

married woman, by trustee for separate use of, 902.

*mesne* rents and profits, account of, 885 *et seq.* See **RENTS AND PROFITS.**

misdeameour, when fraudulent, is 898.

mistake, when executed by, 349, 900.

mixing trust property with private moneys, by, 297, 298, 893, 894, 895.

*no exeat regno*, when granted against defaulting trustee, 900.

negligence, by, 902 *et seq.*

new shares, by neglecting to get in, 908.

notice of, effect of, 862, 897, 901, 923.

notice of apprehended, effect of, on purchaser, 457, 459, 481.

banker of trustee when bound by, 482 note (b).

[The paging refers to the [\*] pages.]

# **BREACH OF TRUST—continued.**

- notice of assignment or transfer, neglect by trustee to give, 903, 904.
- number of trustees, right of *c. q. t.* as to keeping up, &c., 846 *et seq.*
- outstanding, by allowing assets to remain, 296 *et seq.* See **CONVERSION**
- partners of trustee when liable for, 902, 913, 916.
- payment into Court compulsory on, 976 *et seq.* See **PAYMENT INTO COURT.**
- personal representative of trustee, liability of, 906.
- personal security, by allowing assets to remain on, 290.
- policy, trustee suffering, to become forfeited, 903.
- neglecting to give notice of assignment of, 903.
- power imperative, by neglecting to execute, 904.
- priority cannot be obtained through medium of, 714.
- proof for, in bankruptcy of trustee, 912 *et seq.* See **BANKRUPTCY.**
- purchase of trust estate by trustee, 484 *et seq.* See **PURCHASE.**
- purchaser when affected with notice of, 423, 424, 457, 459.
- quasi-trustee, by, 904.
- person reaping benefit of breach of trust is, 344.
- receipt of trustee known to contemplate, 294.
- of executor known to contemplate, 481.
- of trustee who has committed, 472.
- receiver, when a ground for appointment of, 982 *et seq.*
- release of claim in respect of, when effectual, 924 *et seq.*
- registration, by neglecting to effect, 904.
- remainderman, action by, in respect of, 906.
- remedy of *c. q. t.* for, generally, 900.
- removal of trustee on ground of, 846, 847, 849.
- renewal of lease at fixed price, covenant for, 425.
- rents, receipt of, by one co-trustee, 260.
- rents and profits, account of, 885 *et seq.* See **RENTS AND PROFITS.**
- retainer by personal representative of insolvent trustee, 906.
- retire, trustee should not, in favour of one who contemplates, 668.
- reversioner, acquiescence by, 923.
- sale, improper, 423, 424,
- in breach of trust, cannot be enforced, 423.
- neglect by trustee to make, 903.
- of property purchased in breach of trust 472 note (c).
- tortious by trustee of land, 902; of stock, 912. And see **BANKRUPTCY,**
- proof.**
- set off of beneficial interest against debt, when allowed in bankruptcy, 912.
- of gain in one fund against loss in another not allowed, 907, 908.
- simple contract debt, constitutes, 205, 906.
- unless trustee accepted under hand and seal, 205, 906.
- but deed must contain words of covenant and be executed by trustee, 206, 906.
- solicitor, by enabling, to misapply purchase money, 474, 475.
- negotiating loan when affected with notice of, 337.
- trustee, of, when liable for trustee's breach of trust, 899, 900.
- when liable for, 901 note (b), 902.
- wilfully advising or concurring in, is liable to be struck off Roll, 899.
- specialty debt, when breach of trust gives rise to a, 205, 206, 906.
- right of innocent trustees to indemnity is, 909.
- specific performance not granted of contract which amounts to, 423.
- stock, neglect by trustee to procure transfer of, 902, 903.
- to register, 904.
- to renew, 908.
- tenant for life, by showing undue favour to, 291.
- tenant for life participating in, liability of, 910.
- threatened, duty of co-trustee to prevent, 274.

[The paging refers to the [\*] pages.]

# **BREACH OF TRUST**—*continued*.

tortious conversion of trust property, by, 892.  
 trade, by employment of assets or trust funds in, 339, 340, 342, 479. See **TRADE**.  
 trader employing trust money in trade, liability of, 278.  
 trivial, may be overlooked by Court, 992.  
 vendor of property when liable to purchaser as for, 141.  
 vesting order not made so as to lend sanction to, 1032.  
 waiver of right to sue in respect of, 923, 925.  
 wasting property, by neglecting to convert, 298.  
 wilful default, account when granted on footing of, 904 *et seq.*  
 valuation, by want of care in making, on lending trust money on mortgage, 324, 325.

# **BROKER.**

forged letter of attorney, receiving payment by means of, 353.  
 trustee leaving exchequer bills in hands of, held liable for loss, 321 note (b).  
 trustee may employ, in ordinary course of business, 255.  
 trustee who is, cannot profit by the trust, 280.

# **BUILDING.**

conveyances for erection of, for religious or educational purposes exempt from Mortmain Act, 97.  
 equity of stranger supposing land to be his own, 716.  
     knowing it to be another's, 716.  
 erection of, on lands, when equivalent to purchase by trustees, 504.  
     trustees when empowered to expend money on, 576. See **IMPROVEMENTS**.  
 tenant building on landlord's land, 717 ; encouraged by landlord, 717.  
 trustee, by, empowered to expend money on repairs, &c., 576. See **IMPROVEMENTS**.

# **BUILDING LEASE.**

charity estates, of, duration of, 546.  
     consent of Charity Commissioners to, 547.  
 power to grant, when Court will insert, in settlement under executory trust, 127, 128.

# **BUSINESS.** See **TRADE**.

# **BUY IN.**

trustee in bankruptcy and trustees for sale, whether they may, 437.

# **BUY UP.**

trustee cannot buy up incumbrance for himself, 276 *et seq.*  
     application of rule to other persons in fiduciary position, 277, 279 *et seq.*

# **BYE-LAWS.**

power of making, will not authorize deviation from original intention of charity, 535.

# **CAPITAL.**

what is to be regarded as, and what income, 305, 682, 683, 914, 915. See **APPORTIONMENT**.

# **CAPRICE.**

cestui que trust, of, trustee not dismissed on, 849.  
 costs of action caused by caprice of trustee, 989.  
 Court does not act on, 837.  
 tenant for life, of, selling under Settled Land Act, 429, 557.  
 trustee, of, retiring from office, 671, 672.

# **CATHOLIC CHARITIES.**

Charitable Trusts Acts applicable to, 549.

[The paging refers to the [\*] pages.]

# CESTUI QUE TRUST.

- abroad, resident, payment by trustee to, 353, 354.
- purchaser whether bound to see that money is paid to, 476.
- absolute owner, *c. q. t.* is, in equity, 572.
- account, right of *c. q. t.* to, 674, 691. See ACCOUNT.
- acquiescence by, when a bar to relief, 495, 496, 922 *et seq.*
- actions by, as to trust estate, 853, 854 ; at law *c. q. t.* regarded as a stranger, 234.
- adult, duty of trustee to consult, 508, 573.
- adverse title, trustee cannot set up, against *c. q. t.*, 285.
- agent of trustee when accountable to *c. q. t.*, 191, 482, 641, 642.
- alien could only be, of real estate till office found, 44, *secus* since 33 Vict., c. 14, 45.
- alienation by, cannot be restrained, unless married woman, 693.
- assignee of, may call for conveyance or transfer from trustee, 692.
- but is bound by all equities affecting property transferred, 695 *et seq.*
- assignment by, 692 *et seq.*
- anciently not permitted, 3, 4 ; *secus* in later times, 10.
- how *c. q. t.* may make, of equitable interest, 692.
- c. q. t.* may assign even a possibility, and without intervention of trustee, 692.
- attainted for felony, position of trustee, if *c. q. t.* is, 284.
- authority from, to receive trust money, 352.
- bankruptcy, when entitled to prove in, 234, 241, 242.
- whether he is true owner within order and disposition clauses, 245.
- bargain with, trustee cannot make, for own benefit, 277.
- beneficial interest of, may be impounded to answer breach of trust, 911.
- bequest by, 729 *et seq.*
- breach of duty by trustee, protection against, 853 *et seq.*
- concurring in, liability of, 910, 918 *et seq.*
- mere right to sue for not assignable, 692.
- remedy for, 846 *et seq.* See BREACH OF TRUST.
- caprice of, trustee not dismissed on, 849.
- charity may be, 46.
- chattels, *c. q. t.* entitled to possession of, during his interest, 683.
- bankrupt tenant for life, where *c. q. t.* is, 683.
- chose in action*, of, assignment by, 695 *et seq.*
- concurrence of, in breach of trust, 495, 496, 918 *et seq.*
- in direction as to disposition of trust property, 508.
- confirmation by, of purchase by trustee or other breach of trust, 497, 498, 924 *et seq.*
- consent of, 604. See CONSENT.
- to discharge of trustee from office, 845.
- contingent interest, right of *c. q. t.* to have, secured, 654.
- contract for sale by, 423, 424.
- conveyance, when *c. q. t.* should join in, 447.
- when and how *c. q. t.* may require trustee to make, 508, 684 *et seq.*
- See CONVEYANCE.
- coroner, right of *c. q. t.* to vote for, 234, 681.
- corporation cannot be, of lands, without license of Crown, 44.
- costs of conveyance to, must be paid by, 688.
- taxation of costs at instance of *c. q. t.*, 637 note (c).
- trustee, right of, to costs as against *c. q. t.*, 986 *et seq.*
- co-trustee who is, cannot hold co-trustee liable for joint breach of trust, 918.
- Crown may be, 43.
- death of, on, trustee must pay trust fund to his representatives, 346.
- debt of, when chattel may be taken in execution for, 224.
- debtor to estate, who is, effect of assignment by, 696.

[The paging refers to the [" pages.]

**CESTUI QUE TRUST**—*continued*.

- devise by, requisites to, 720 *et seq.*
- disability of, operation of Statute of Limitations how affected by, 867 *et seq.*
- disposition of estate, *c. q. t.* has power of, 674.
- distress of, confirmation obtained by, ineffectual, 498; 926.
- delay when excused by, 496, 866, 870.
- dividends, *c. q. t.* usually put in possession of, by power of attorney, 684.
- divorce of, effect of, on *choses in action*, 346.
- domiciled abroad, care to be taken in making payment to, 348.
- ejectment, *c. q. t.* could not recover real estate in, 678, 867.
  - unless surrender could be presumed, 678.
  - must have brought his action in name of trustee, 678, 868.
  - could not defend action by trustee, 678; but must have resorted to equity, 678.
- election by, under trust for conversion of property, 690, 953 *et seq.* See **ELECTION**.
- estate of, extent of, Chap. XXVI., 674—691.
- properties of, Chap. XXVII., 692—832.
- executor of, when entitled to call for conveyance, 688.
- expenses of trustee, when personally liable for, 642, 643.
- failure of heirs or next of kin of, effect of, 282 *et seq.*
- failure of trustee, remedy of *c. q. t.* against, 833 *et seq.*
- following trust property, rights of *c. q. t.* as to, 857 *et seq.* See **BREACH OF TRUST**.
- franchise, parliamentary, right to, 235.
- fraud of, breach of trust induced by, 919.
- gift, cannot make, to trustee, 277.
- heir of, when entitled to money to be laid out in land, 941, *et seq.* See **CONVERSION**.
- heirlooms, whether he may let for hire, 684.
- husband of, appointed trustee, 41, 1030.
- ignorance of, laches when excused by, 496, 866, 870.
- improvidence of, not a ground for withholding payment to him, 345.
- infancy of, duties and powers of trustees how affected by, 489. See **INFANT**.
- information, bound to give, to the trustee, 685, 686.
- right of *c. q. t.* to call for as to state of trust, 448, 691.
- injunction, right to, to restrain trustee from breach of duty, 855; though damage not irreparable, 855.
- inquiries of, trustee bound to answer, 448, 691, 704.
- inspection of documents, has right to, 449, 680.
- judgment against, Chap. XXVII., sect. 7, 794—817. See **JUDGMENT**.
- judgment creditor of, right of, to take chattel in execution, 224.
- juror, qualification of *c. q. t.* to be, 681.
- jus habendi* and *jus disponendi* of, 674.
- laches of, when a bar to relief, 495, 496, 901.
- trustee, of, does not prejudice *c. q. t.* 520.
- land held adversely, must must bring ejectment for in name of trustee, 678, 867, 868.
- by party claiming by conveyance from trustee, action as to, 868.
- land wrongfully sold by trustee, rights of *c. q. t.* in respect of, 902.
- lease by, 678, 679.
- legal estate, right of, to call for conveyance of, 18, 684 *et seq.*
- legal proceedings, may require trustee to institute, on giving indemnity, 853.
- lien of, for advances by him to trustees, 640, 641.
- in respect of breach of trust, 241, 449, 892, 897.
- Limitations, Statute of, when barred by, 866 *et seq.*
- in action against stranger, 866 *et seq.*, 880.

[The paging refers to the [\*] pages.]

**CESTUI QUE TRUST**—*continued.*

- in action against trustee, 876, 880.
- possession by *c. q. t.*, effect of, 881, 882.
- married woman, estate of, 738 *et seq.* See **MARRIED WOMAN.**
- mistake by, when an excuse for delay, 866, 870. See **MISTAKE.**
- new trustee, application by, for appointment of, 1030.
- when to be served with, 1033.
- notice to, by trustee, of intention to do particular act, 573.
- parliamentary election, right of *c. q. t.* to vote at, 681, 682.
- pernancy of profits of trust estate, *c. q. t.* entitled to, 674 *et seq.*
- possession by, effect of, as regards Statutes of Limitation, 881, 882.
- possession, right of *c. q. t.* to, 674; in equity only, 677; at law was merely tenant at will, 677, 881.
- chattels, as to 683.
- indemnity, when to be given by *c. q. t.*, 686, 687.
- married woman entitled for separate use, 676.
- mistake, where *c. q. t.* in, by, 882.
- real estate, as to, 674.
- tenant for life, equitable, 675, 676.
- where *c. q. t.* entitled subject to a charge, 675.
- privileges of, 681 *et seq.*
  - to serve as juror, 681.
  - to vote for coroner, 234, 681.
  - to vote at parliamentary elections, 235, 681, 682.
- proof by, in bankruptcy, 234, 241, 242.
- protector of settlement, may be, 682.
- purchase from, by trustee when upheld, 487, 488.
- purchaser is, *sub modo* before completion, 142, 233.
- real estate, of, action by, 678.
- receiver, right of *c. q. t.* to appointment of, 982, 983.
- refund, when bound to, 356, 357.
- release by, of claim for breach of trust, when effectual, 924 *et seq.*
- release by, when trustee may require, 358.
- remainderman, remedy of, in equity, 846, 854. See **REMAINDERMAN.**
- remedy of, for breach of trust, 857 *et seq.* See **BREACH OF TRUST.**
- subpoena in chancery, to enforce trust, 16.
- removal of trustee on application of, 849 *et seq.*
- renewal of lease by trustee, remedy of *c. q. t.* in respect of, 185, 186. See **RENEWABLE LEASEHOLDS.**
- rents and profits, receiving, is bailiff of trustee, 881, 882.
- rights of, cannot be varied by act or neglect of trustee, 938, 939, 963.
- sale by, to trustee, when upheld, 487, 488.
- security from trustee, right of *c. q. t.* to, 854.
- settled account with trustees, opening, 630.
- share, aliquot, of *c. q. t.*, when ordered to be paid into Court, 977.
- simple trust, estate of *c. q. t.* under, 674 *et seq.*
- solicitor of, cannot bind him by contract with trustee, 488.
- special trust, estate of *c. q. t.*, 689 *et seq.*
  - each *c. q. t.* entitled to enforce, to extent of his interest, 689.
  - where one *c. q. t.*, or all unanimous, special trust becomes simple, 687.
  - continues until election of *c. q. t.* known, 690.
- sport, right of *c. q. t.* to, under old law, 681.
- sub modo*, purchaser before completion is, 142, 233.
- sui juris*, trustee bound to observe wishes of, 508, 573.
- taxation at instance of, of costs of solicitor to trust, 637 note (c), 642.
- tenant at will, *c. q. t.* at law merely, 677.
- when *c. q. t.* is, to trustee, 881.
- tenant for life, rights of. See **TENANT FOR LIFE; SETTLED LAND ACTS.**



[The paging refers to the [\*] pages.]

# **CESTUI QUE TRUST—continued.**

- tenant in common, right of, to injunction against co-tenant, 679.
- title, is bound to show, to trustee, 344.
- title deeds, rights of *c. q. t.* as to custody of, 679, 680.
- to inspection, 449, 680.
- "true owner," whether he is, within Bankruptcy Act, 245.
- trust, right of *c. q. t.* to enforce, 67; and see **BREACH OF TRUST**.
- trust property, right to follow, in case of breach of trust, 857 *et seq.* See **BREACH OF TRUST**.
- trustee, right of *c. q. t.* to have proper, 846; and proper number kept up, 43, 846.
- whether *c. q. t.* may be, 41, 665.
- whether husband of *c. q. t.* may be, 41, 1030.
- unwillingness of Court to appoint *c. q. t.* or relative, 41, 665, 666, 1030.
- voluntary settlement, under, action by, 853.
- lands or chattels real, of, rights of *c. q. t.*, 76.
- volunteer, when Court will assist, 70.
- voting at elections, rights of *c. q. t.* as to, 681, 682.
- vouchers, is entitled to inspection of, on payment, 449.
- who may be, Chap. III. sect. 3, 43—46.
- widow of, not entitled to dower, 11.
- will, *c. q. t.* may dispose of his equitable interest by, 720 *et seq.*

# **CHAMBERS.**

- jurisdiction of chancery judges at, in case of charities with income over £30, 931.
- or of City of London charities, 931.
- questions affecting trusts now determined in, on originating summons, 350.
- Trustee Acts, proceedings under, at chambers, 1027, 1030, 1034, 1035, 1040.
- See **TRUSTEE ACTS**.
- Trustee Relief Act, proceedings under, at chambers, 1000, 1001.

# **CHANCELLOR.**

- application to, as visitor of charity, how made, 530.
- Ireland, Lord Chancellor of Great Britain, &c., has no jurisdiction in lunacy over lands in, 1039.
- lunatics and idiots, his control over estates of, 1044.
- Trustee Act, commission *de lunatico inquirendo* may issue under, 1038.
- jurisdiction of Lords Justices under, 1039, 1044.
- visitatorial power of Crown committed to, 530.

# **CHANCERY, COURT OF.**

- Bankruptcy Act, jurisdiction to appoint new trustees under 850.
- corporate bodies, jurisdiction over, 528 *et seq.*
- jurisdiction of, transferred to Chancery Division of High Court of Justice, 17.
- king's conscience, had no jurisdiction over, 30.
- power imperative, in favour of what objects executed by Court, 834 *et seq.*
- trusts, jurisdiction over, 16.
- on failure of trustee, 833 *et seq.*
- vicariously, how far Court can exercise jurisdiction, 835.

# **CHANCERY DIVISION OF HIGH COURT OF JUSTICE.**

- administration of trusts assigned to, 17.
- charities, causes and matters relating to, assigned to, 528 note (a).
- portions, causes and matters for raising, assigned to, 421.

# **CHANCERY FUNDS (AMENDED ORDERS), 1874, 1005.**

# **CHAPEL.**

- endowment of, how transmissible at law, 85.
- minister of, in case of dissenters may be removable at will of congregation, 535.
- election of, how effected, where no direction in endowment deeds, 534.

[The paging refers to the [\*] pages.]

# CHAPEL, minister of—*continued*.

- possession by, continued until hearing of cause, 534.
- tenant at will of trustees, is, 534.
- repair of, trust for, held to authorize rebuilding, 538.
- trust for, before Statute of Mortmain, how carried into effect in equity, 85.
- trusts of, trustees cannot change or depart from, 531, 534.
- trustees of, entertaining opinions contrary to founder's intention removed, 847.
- trustees of, how appointed where no direction in endowment deed, 534, 852, 853.

# CHARGE.

- assignment of, to attend inheritance; cautions to be observed as to, 732, 733.
- charity legacy, of, effect of, 155 *et seq.*
- contingent legacy, of, effect of, 154.
- debts**, of, in will, effect of, 461 *et seq.*, 825. See RECEIPT.
  - legal fee simple when passing by virtue of, 218.
  - power of sale and giving receipts, where it implies, 461 *et seq.*
  - Settled Land Act, effect of, on powers of sale and mortgage, 470.
  - trust estate, excluded by, from passing under devise, 227.
  - trust implied in devisee, 140.
  - uses, operation of statute of, not excluded by, 211.
  - where land sold by Court under, surplus treated as realty, 146.
- declaration of trust, partial, distinguished from, 146.
- devise by trustee in general terms, effect of, on charge, 227.
- devisee or heir subject to, is impliedly a trustee, 140.
- discharge of land from, when money raised by trustee, 449.
- duplication of charges, referential trust not to be construed so as to create, 130.
- duty, coupled with, is equivalent to express trust, 879.
- election by person entitled subject to, to take property unconverted, 956.
- exception from devise distinguished from devise subject to, 154.
  - distinction how far applicable to charity legacy, 155, 156.
- executor, power of, to sell real estate to raise, 461 *et seq.*
- exoneration of property from, as between several purchasers, 717 *et seq.*
- express trust, distinguished from, 878, 879 *et seq.*
  - secured by, barred under Real Property Limitation Act, 1874, 885.
- failure of, devisee entitled to benefit of, 154.
  - charge of sum to be appointed and no appointment, 154.
  - failing after being raised, results as personalty, 155.
- first, cannot be kept on foot by creator of second charge, 727, 728.
- general and roving, postponed to specific, 718, 720.
- inheritance, whether it can be made to attend, 732, 733.
- intention of settlor, question of trust or charge depends on, 146.
- judgment is, upon whole lands of debtor, 803, 804.
- keeping on foot, mode of, 727, effect of, 729, special cases of, 731, 732.
  - for benefit of next of kin, 729 note (e).
- legacies, of, on land or other property, right of devisee or legatee on failure of charge, 157 *et seq.*
- Limitations, Statutes of, mere charge not an express trust within, 878, 879.
  - secus* as to charge coupled with a duty, 879.
  - not barred by, whilst secured by term unbarred, 880.
- merger of, 726 *et seq.* See MERGER.
- mortgage to raise, when proper, 426.
- multiplication of, referential trust not construed so as to create, 130.
- owner of, purchase of equity of redemption by, 728.
- partial trust distinguished from, 146, 153.
- payment off of, by owner or part owner, 730. See MERGER.
- portion, of, on settled estate, 418. See PORTION.
- power to, not a "usual" power, 127.

[The paging refers to the [\*] pages.]

# **CHARGE—continued.**

- priority of, by giving notice, 702.
- purchaser, how effected by, 726 *et seq.*
  - paying off, before completion, charge does not merge, 727.
  - right of, to insist on keeping charge on foot, 727.
- "securities" for money, legal fee in mortgage when passing under, 228.
- specific preferred to general, 720.
- "subject thereto," effect of, 154, 155.
  - implied, 155.
- trust, partial, declaration of, distinguished from charge, 146.
- trustees for sale, when he may apply purchase-money in paying off, 594.
- Trustee Relief Act, owner subject to charge is not trustee within, 996.

# **CHARGES AND EXPENSES.**

- trustee when entitled to, 421, 413, 634 *et seq.*, 987. See COSTS.

# **CHARGING ORDER, of stocks, shares, &c., 806 *et seq.***

- application for, how to be made, 807.
- Court, what, empowered to make, 807.
- discharge of, 809.
- dividends still payable to trustees where order made on partial interest of
  - c. q. t.*, 808.
- effect of, 808, 809.
- enforcement of, by proceedings for foreclosure or sale, 806.
- incumbrances, prior, not prejudiced by, 808.
- interest charged, amount of, not defined by, 807.
- judgment payable *in futuro*, may be made in respect of, 808.
- jurisdiction to make, in whom vested, 807.
- proceedings for having benefit of, cannot be taken before six months, 807.
- scus*, where to protect the interest of the judgment creditor, 808.
- specific charges, ranks subsequent to, 808.

# **CHARITABLE TRUSTS OR USES. See CHARITY.**

# **CHARITABLE TRUSTS ACTS, 547 *et seq.*, 852. See CHARITY; CHARITY COMMISSIONERS.**

# **CHARITY.**

- account of rents and profits of, when directed, 934 *et seq.*
- advowson held in trust for parishioners is not a charity, 86.
- alienation of charity property by trustees, not permitted, 539.
  - whether absolutely, or for reserved rent, 539.
  - not permitted by granting long, renewable, or reversionary terms, 539.
  - permitted under special circumstances, 540.
  - lease, sale, or exchange can now be made with consent of commissioners, 540.
- alteration of scheme or purpose not permitted, 530 *et seq.*
  - notwithstanding power to make bye-laws, 535.
  - trust originally intended will be preserved, 533.
    - but letter may be contravened where spirit of trust preserved, 536.
    - or details of management varied as circumstances change, 539, 546.
  - Act of Parliament necessary for total alteration, 535.
  - how application for Act authorized, 535, 536.
- apportionment in favour of, as between pure and impure personalty, 951.
- Attorney-General, consent of, to compromise, 935.
  - to proceedings under Romilly's Act, 930 *et seq.*
- Bankruptcy, District Court of, jurisdiction of, 852 note (d), 932.
- breach of trust for, Chap. xx. sect. 4, 927—937.
  - accounts of mesne rents, what, directed, 934 *et seq.*
  - Charitable Trusts Act, 1853, jurisdiction under, 931.
  - equity judge at chambers where income above £30, or below if in City of London, 931.

[The paging refers to the [\*] pages.]

**CHARITY, breach of trust for**—*continued.*

Charity Commissioners, consent of, to proceedings when required, 932.  
commissions under Statute of Charitable Uses, 927.

compromise with sanction of Attorney-General allowed in case of hardship, 935.

corporation, property of, how attached, 936, 937.

District Court of Bankruptcy and County Court, jurisdiction of, where income not above £50, 932.

appeal from, when allowed, 932.

information, remedy for, is ordinarily by, 31, 927.

where by bill, 927 note (1).

relators joined on account of costs, 927.

Limitations, Statutes of, do not bar right to account, 934.

mistake, trustees acting from, not made to account, 936.

parish, no retrospective account against, 936.

petition under Romilly's Act, 927; construction of Act, 928; cases within, 929, 930.

appeal lies direct to House of Lords, 928.

Attorney- or Solicitor-General, must be signed by, 928.

Attorney-General must be a party to subsequent proceedings, 930.

motion, subsequent proceedings may be by, 931.

presumption of acquiescence, with regard to corporations and individuals, 936.

removal of master, possession how recoverable on, 537, 929.

retainer of charity funds, 539.

building leases, power to grant, 546.

Chancery Division, execution of charitable trusts assigned to, 528.

chapel, administration of trust for, 531 *et seq.*, 847.

charge of legacy in favour of charity, effect of, 155 *et seq.*

on failure of charge, who entitled, 157 *et seq.*

**Charitable Trusts Acts**, 547 *et seq.*

charities exempted from, 548, 549.

leases under, 547. See *infra*, leases.

remedy under, for breach of trust, 931 *et seq.* See *supra*, breach of trust.

Charitable Uses, Statute of, commission under, 927.

charter, jurisdiction of Court over charities established by, 528 *et seq.*

City of London Parochial Charities Act, 1883, provisions of, 537.

commission of inquiry into, now obsolete, 927.

Commissioners under 58 Geo. 3, c. 91, and 59 Geo. 3, c. 81, 931.

Commissioners under Charitable Trusts Acts. See CHARITY COMMISSIONERS.

construction of trust for, 531 *et seq.* See *infra*, trust.

**conveyance to**, formalities to be observed under Mortmain Act and recent Acts, 96, 541.

upon secret trust for grantor until death, 96.

County Court, jurisdiction of, 852 note (d), 932.

*cy pres* doctrine in favour of, 837, 838.

application of, as against resulting trust, 161.

definition of, 20, 528.

discretionary power, Court will freely exercise in favour of, 836.

duties of trustees for, 528 *et seq.* See *infra*, trustee.

ejectment of person ceasing to hold office under, 537.

Endowed Schools Act, 1869, provisions of, 537.

exemption of certain charities from Charitable Trusts Acts, 548, 549.

founder, wishes of, to be observed, 530, 539, 546. See *supra*, alteration.

funds of, mixed with funds of another charity, recovery of, 895, 896.

general intention in favour of, carried into effect, 161.

[The paging refers to the [\*] pages.]

**CHARITY, conveyance to—continued.**

- gift to, by deed or will, when effectual, 96.
- Governors of, cannot lease to one of themselves, 542.
- information for removal of, improper, 529.
- improvements by lessees, allowance for, 544, 546.
- incorporated**, government of corporation belongs to visitor, 528, 529.
- management of revenue subject to Chancery, 529.
- new donations distinguished from original endowments, as respects visitatorial power, 529.
- trustees for charities may now become, 547, 548.
- information in name of Attorney-General when proper remedy, 31, 927.
- inrolment, conveyance of new trustee requires no, 669, 670.
- investment** of monies of, 313, 541, 542.
  - accumulations of income, of, 541.
  - whether in purchase of land, 541.
  - or mortgage, 541.
  - monies arising from sale or exchange with consent of Commissioners, 540, 541.
  - proceeds of land, of, in railway debenture stock, 312.
  - real security, in, 313, 542.
- jurisdiction of Court over, 528 *et seq.*, 836.
- leases when a bar to action for account, 934 *et seq.*
- lands, proceeds of sale of, cannot be bequeathed to, 950, 951.
- lapse of gift in favour of, 161 note (*d*).
- leases of charity lands**,
  - Charitable Trusts Acts, how to be made under, 547.
  - consideration for, fines, rents, &c., 543.
    - adequate, should be, when granted, 543.
    - direction by founder that rent should not be raised, 543.
    - tenant who dealt fairly not turned out, 544.
  - allowances to, for permanent improvements, 544.
  - under value, who shall compensate charity where lease granted at, 544.
  - whether fines might have been taken for, 543.
  - covenants for trustee's private advantage, should not contain, 542, 543.
  - directions of settlor as to, must be strictly followed, 546.
  - discretionary powers to grant, may be controlled, 616.
  - governors cannot lease to, or in trust for, one of themselves, 542.
  - relatives of trustees, to, inadvisable, 542.
  - renewal of, tenant has no right to insist on, 544.
  - term of, agricultural leases should not exceed 21 years, 545.
    - building leases should not exceed 99 years, 546.
    - for years determinable on lives, sanctioned, 545.
    - so for lives on payment of fines, 546.
    - under Charitable Trusts Acts, 547.
    - unreasonable extent of term, 544, 545.
- legal estate cannot be limited to objects of, 46.
- Limitations, Statutes of, application of, to charities, 871, 884, 934.
- majority of trustees of, may bind the rest, 259, 540, 547, 592, 597.
- mesne rents and profits, account of, when, and from what time directed, 934 *et seq.*
- Mortmain Act, 9 Geo. II., c. 36, trust for charity must comply with requirements of, 96. See MORTMAIN.
- new trustees** of, appointment of, 534, 850, *et seq.*
  - by Court under Trustee Acts, 1030, 1035
  - Charitable Trusts Act, under, 852
  - Charity Commissioners, sanction of, required, 852, 933.
  - conveyance of land in mortmain need not be enrolled, 669, 670.

[The paging refers to the [\*] pages.]

**CHARITY**—*continued*

- corporation, in place of, 851.
- delegation by Court of power to appoint, 849.
- direction to appoint, when reduced to a given number, 600, 601, 667.
- Peto's Act, under, 852.
- Romilly's Act, under, 929.
- where deed of endowment does not provide for appointment, 852, 853.
- where trustees irregularly appointed, 848, 849.
- notice, doctrine of, how far applicable to, 936.
- officer of, proceedings for removal of, how to be taken, 537, 929, 933.
- official trustees of charitable funds, 361.
- parishes, apportionment of charities on division of, 929.
- payment or transfer of money, stock, &c., to, by order of Commissioners is an indemnity, 361.
- perpetuity, rule against, does not affect trust for, 20.
- "poor relations," gift for, 836, 837, 843.
- poor, trust for, how to be administered, 531.
- power to select objects of, may be severed from estate, 610.
- discretion of donee of power, as to, when controlled by Court, 615, 616.
- exercise of, by will, 616.
- purposes of, must be strictly observed, 530, 531; but details of management may be varied, 539, 546.
- real estate, bequest to, of proceeds of, 950, 951.
- conveyance of upon trust for, formalities necessary under Mortmain Act, 96, 541.
- religious bodies, trusts for, 533. See *infra*, trust.
- remedy for breach of trust, Chap. xxx., sect. 4, 927—937. See *supra*, breach of trust.
- rents and profits of, account of, when and from what time directed, 934 *et seq.*
- rents of lands of, raising, 543.
- surplus rents, when applicable to charitable purposes, 161, 162.
- resulting trusts**, how far legacies to charities result, 161, 162.
- increased rents applicable as original gifts, 161
- exceptions to rule, 162.
- object of gift failing, resulting trust does not arise, but Court directs application, 161.
- Roman Catholic charities are subject to Charitable Trusts Acts, 549.
- Romilly's Act, petition under, 927 *et seq.* See *supra*, breach of trust.
- sale of lands of, jurisdiction of Court to order, 930.
- with consent of Commissioners, 540.
- scheme for**, alteration of, not permitted, 535.
- distribution under power of selection, as to, 615.
- Romilly's Act, Court has jurisdiction under, to settle, 929.
- secret trust for, 63.
- devise of legal estate is not invalid by reason of Mortmain Act, 66.
- secret trust for grantor of land to, until death, void, 96.
- surplus funds not allowed to be expended unnecessarily, 538.
- surplus rents of charity lands, when applicable to charitable purposes, 161, 162.
- tomb, trust for maintenance of, when charitable, 106.
- trust for**, construction of, more liberal than in ordinary trusts, 667, 836.
- "chapel," 531.
- declaration of, where numerous contributors, 533.
- departure from original trust, when permitted, 533.
- failure of, not permitted, 161.
- "free grammar school," "free-school," 536.
- lapse of time, when barred by, 871.

[The paging refers to the [\*] pages.]

# CHARITY—continued.

- loans, amount of charitable, may be increased, according to value of money, 539.
- “master, finding a,” 537.
- “parishioners,” for, 539.
- perpetuity, rule against, does not affect, 20.
- “poor, relief of,” 531, 538.
- “poor relatives,” 836, 837.
- “promotion of godly learning,” 533.
- public trust is synonymous with, 20.
- purchaser without notice from purchaser with, bound by, 859.
- rates, in aid of, 532.
- religion, established form of, where trust executed in favour of, 533.
- when in favour of dissenters, 533.
- religious worship, *primâ facie* determined by trust deed, 533.
- if not defined, then by usage, 533.
- repairing and rebuilding, for, 538.
- salaries, when augmentation or reduction may be made, 538.
- secret trust for, 63.
- such charity as trustees may appoint, trust for, valid, 106.
- unattested paper, by, referring to will ineffectual, 52.
- “worship of God,” 533.
- trustees for, appointment and removal of, 848. See *supra*, new trustees.
- duties of, Chap. XXI., 528—549.
- entertaining opinions contrary to founder, removed, 847.
- fitness of, Court how satisfied as to, 849.
- incorporation of trustees, 547, 548.
- inhabitants of particular place, required to be, 848.
- jurisdiction of Court in respect of, 1035.
- majority of, binds minority, 259, 540, 547, 592, 597.
- mistake, acting by, how far liable to account, 872, 934, 936.
- new trustees, appointment of, 534, 600, 601, 667. See *supra*, new trustees.
- payment of dividends to two or more, 260.
- quorum, Court sometimes appoints, 260.
- religious views of, when to be considered, 42, 847, 933.
- removal of, 848, 933.
- sale of lands by, under Lands Clauses Act, 540.
- transfer by, to official trustees, 361.
- Trustee Relief Acts, may pay money into Court under, 997.
- use in favour of, is within Statute of Frauds, 54.
- purchaser without notice from purchaser with, bound by, 859.
- Statute of Charitable Uses, commission under, 927.
- when it may be averred by parol, 52.
- vesting order, jurisdiction of Court to make, as to charity lands, &c., 1035.
- See TRUSTEE ACTS.
- visitor, jurisdiction and office of, 528, 529, 530.
- will of founder, direction of, must be strictly followed, 546.

# CHARITY COMMISSIONERS.

- advice, may give, and persons acting under, are indemnified, 933.
- Agricultural Holdings Act, 1883, must consent to exercise of powers of, 547.
- Attorney-general, they may certify cases for his interference, 931.
- authority of, must be formally given, 933 note (f).
- contentious cases, should not make orders in, 934.
- Endowed Schools Commissioners' powers transferred to, 537.
- exchange of lands, may authorize, 540.

[The paging refers to the [\*] pages.]

# CHARITY COMMISSIONERS—*continued*.

- exemption of certain charities from control of, 548, 549.
- incorporation of trustees under certificate of, 547, 548.
- inquisitorial powers of, 931.
- investment of monies arising from sale or exchange by, 540.
- leases, may authorize building, &c., 547.
  - exceeding twenty-one years, trustees must have Commissioners' sanction, 547.
- new trustees, appointment of, their powers as to, 852, 933.
- official trustee of charity funds, 361, 933.
  - of charity lands, 933.
- orders, powers to make, under Charitable Trusts Act, 1860...933.
- proceedings, their consent when necessary before taking, 931 *et seq.*
- sale of lands, may authorize, 540.
- scheme, new, may provisionally approve, 535.
  - to be submitted to Parliament, 535.
- transfer of trust funds, may authorize, 361.
- Trustee Relief Act, consent of Commissioners, whether necessary to proceedings under, 932, 997.
- trustees, powers as to appointment and removal of, 534 note (*h*).

# CHARTER.

- charity established by, jurisdiction of Court over, 528, 530.

# CHATTELS.

- agreement to settle, on same trusts as real estate, 115.
- assets in equity, equitable chattels were always accounted, 826.
- bankrupt trustee, in possession of, when subject to order and disposition clauses, 242 *et seq.*
- bequest of, upon trusts corresponding with real estate, 98.
- cestui que trust* of, dying intestate and without next of kin, who are entitled, 285.
- custody of, duty of trustee as to, 294 *et seq.*
- disclaimer of, may be by parol, 199.
- entailed, cannot be, 94, 95.
- execution against, for debt of trustee, 224; of *c. q. t.*, *ib.*, 795, 796.
- executor, powers of, to deal with chattels of testator, 477 *et seq.*, 597.
- executor of trustee, devolution of trust chattel on, 223.
- executory trust of, how construed, in marriage articles, 115. See EXECUTORY TRUST.
- in will, 122,
  - following, into hands of purchaser, 893
- forfeiture of, on conviction for felony, 28, 820.
- heirs, chattels limited to A and his heirs are personal estate, 94.
- inventory of, duty of trustee to make, 207.
- judgment when a lien on, 810.
- life estate in, limitation of, at law and in equity, 85.
- limitation at law by deed, how far chattels capable of, 85; by will, *ib.*
  - in equity, by way of trust, chattels may be freely subjected to, 85.
- married woman, of, rights of husbands in respect to 739 *et seq.* See MARRIED WOMAN.
- personal not within Statute of Frauds, sect. 7, 53.
- possession of, *c. q. t.* when entitled to, 683, 684.
- real, are within Statute of Frauds, sect. 7, 53; *secus* sect. 10, 802.
  - assignment of, deed when necessary for, 693.
  - entailed, cannot be, 94; except term in trust to attend inheritance, 95.
  - life estate in, may be limited by way of trust, 85.
  - vesting of, in new trustee, 650, 651.
- resulting trust, whether delivery of chattels gives rise to, 145.
  - on purchase in name of stranger, 163.



[The paging refers to the [\*] pages.]

# CHATTELS—continued.

- sale of, by executor, 477 *et seq.*
- sale of, in market overt, 860, 893.
- sale of, under Settled Land Acts, 566, 567.
- settlement of, agreement or direction for, how construed, 115, 116, 122 *et seq.* See EXECUTORY TRUST.
- settlement of, cannot be made to follow realty exactly, 116.
  - strict settlement, how effected, 98.
- specifically bequeathed, executor may sell, 478, 479.
- tenant for life of, when entitled to possession, 683.
  - bankruptcy of, are not forfeited on, 683.
- trust of, 4, 6, 53.
  - chattels may be subjected to limitations by way of trust, 85.
  - corresponding with trust of realty, how carried into effect, 115 *et seq.*
  - See EXECUTORY TRUST.
  - not affected by Statutes of Uses, 6.
  - perpetuity, application of rule against, 98.
  - when perfectly created, 69.
- trustee of, duties of, generally, Chap. XIV. 287—362.

# CHEQUE.

- trustee justified in accepting, in payment of deposit on sale, 437.

# CHILD. See INFANT.

- advance to, regarded as portion, 404.
- illegitimate, status of, 95, 177, 402. See ILLEGITIMATE CHILD.
- maintenance of infant, 581 *et seq.* See MAINTENANCE.
  - mother liable for, 793.
- portion to, 385 *et seq.* See PORTION.
- purchase in name of, *primâ facie* an advancement, 170 *et seq.* See ADVANCEMENT.
- trust for children of A as B shall appoint, effect of, 838.

# CHOSE IN ACTION.

- assignment of, 72, 446, 447, 695 *et seq.*
  - assignable now by statute, 72, 695 note (c), 712, 713; but assignment must be by writing and notice must be given, 72, 695 note (c), 712, 713.
  - assignee takes subject to equities, 695, 862.
    - priority of, by giving notice, 72, 702 *et seq.*
  - trustee, by, power of attorney how to be qualified, 446, 447.
- breach of trust, right to sue for, how far assignable, 692.
- debentures in company, 243.
- equitable interest in chattel real is not, 747.
- husband's power over wife's, 24, 739 *et seq.* See MARRIED WOMAN.
- judgment recovered by wife is her *chose in action*, 747, 748.
- married woman, of, 23, 24, 739 *et seq.* See MARRIED WOMAN.
- notice of assignment, how it gives priority, 72, 702 *et seq.*
  - distinction between *chose in action* and real estate in this respect, 704, 705.
  - neglect by trustee to give, 903, 904.
- order and disposition clause, not to be deemed goods within, 243.
- payment of, into Court, under Trustee Relief Act, 997.
- policy of life assurance, 243.
- purchaser of, from trustee, holds subject to same equity as trustee, 862.
- reduction of, into possession, by husband, 24, 739, 740, 741, 745. See MARRIED WOMAN.
- by trustee, 287, 288.
- reversionary, trustee may concur with persons having prior interest in calling for transfer of, 288.

[The paging refers to the [\*] pages.]

**CHOSE IN ACTION**—*continued*.

- shares in company are not, within Bankruptcy Act, 243; *secus* equitable interest in shares in names of others, *ib*.
- trust formerly considered in nature of, 8.
- secus* in later times, 10.
- trustee of, should reduce into possession, if possible, 287, 288.
- vesting orders as to, powers of Court to make, 1014 *et seq*. See **TRUSTEE ACTS**.
- effect of, 1024.

**CHURCH**. See **CHAPEL**.

- monument or window in, trust for repairing, valid as charitable gift, 106.
- trust for, by will, how carried out in equity, 85.
- trustees, appointment of, 542.
- incorporation of, 542.
- investment by, in Government or real securities, 316.

**CHURCHWARDENS AND OVERSEERS**.

- parish property vests in, under 59 Geo. 3, c. 12, 532 note (1).

**CIRCUIITY**.

- Court of equity avoids, 688, 883, 891.
- trustees may avoid, 573.

**CITY OF LONDON PAROCHIAL CHARITIES ACT, 1883, 473.**

**CLAIM**. See **ACTION**.

- adverse to *c. q. t.*, trustee should not make, 285.
- by third persons, right of trustee to investigate, 349.

**CLASS**.

- general intention in favour of, aided by Court, 839.
- power, in favour of what class Court will exercise, 840 *et seq*.
- presumption of release weaker in case of, 870, 923.
- time allowed to, for prosecution of rights, 496, 936.

**CLERK IN HOLY ORDERS**.

- election of, under trust for parishioners, 86, 87.
- mode of election, 88, 89, 257.

**CO-ADMINISTRATOR**.

- on same footing as co-executor as to liability, 273.

**CODICIL**. See **WILL**.

**CO-EXECUTOR**. See **EXECUTOR**.

- receipts, liable for joining in, *pro forma*, 268.
- unless joining be nugatory, 269; or *ex necessitate*, 272.

**COHABITATION BOND, 106 note (b).**

**COLLATERAL**.

- equitable powers may be, 598.

**COLLECTOR**.

- trustees may employ, of debts, 632, 633; of rents, 632, 637.

**COLLUSION**. See **FRAUD**.

**COLONIAL STOCK ACT, 1877, 322.**

**COLONY**.

- colonists carry out their country's law with them, 55.
- but subsequent enactments do not follow them across the seas, 55.
- lands in, not within Statute of Frauds, 55.
- lands in, within Trustee Act, sects, 54, 56 . 1039.

[The paging refers to the [\*] pages.]

## COMMISSION.

- agent, trustee who is, cannot charge, 280.
- army agent, notice to, of charge on proceeds of officer's commission, 708.
- charity, to inquire into, under Statute or Charitable Uses, 927.
- de lunatico inquirendo*, under Trustee Act, 1038.
- executors in the East Indies, whether they may charge, 628, 629.
- mortgagees, trustees, &c., cannot charge, 628.
- secus* as to trustees for absentees of estates in West Indies, 628.
- or if allowed to trustee by settlor, 630, 631.
- or stipulated for with *c. q. t.*, 631.
- or with Court before acceptance of trust, 632.
- payment of, by trustees, on sale by auction, 571.

## COMMITTEE OF LUNATIC.

- charge for time and trouble, may not make, 628.
- conversion of lunatic's property by, 965, 966.
- office of, does not survive, 261.
- receipts for money, cannot sign, 355.
- repairs, cannot make, without previous order, 597.
- or after decree in administration action, 597.
- Trustee Acts, when to be made a party to proceedings under, 1033.

## COMMON LAW.

- Courts have no jurisdiction over trusts, 15, 16, 224.
- quære*, whether they can notice breach of trust, 668, 669.
- creation of trust at, Chap. v. sect. 1, 51, 52.

## COMMON, TENANCY IN. See JOINT TENANCY ; TENANT IN COMMON.

## COMPANY.

- borrowing powers, directors of, must not exceed, 595.
- conversion of shares in, where bequeathed in succession, 300.
- directors of, breach of trust or misfeasance by, 191, 279, 595, 901, 903. See

### DIRECTOR.

- lease to, under power of leasing, by trustees, 595.
- restraining orders under 5 Vict. c. 5, sect. 4: applicable to shares in, 971, 974.

shares in. See SHARES.

- trading, powers of managers of, 595.
- trustee of shares in, liability of, 239.
- trusts of shares not usually noticed, 970.
- Trustee Acts, bound by orders under, 1024, 1043.

## COMPENSATION.

- breach of trust, from person who benefits by, 544.
- next of kin of infant not entitled to, for necessary outlay on real estate, 968.
- undervalue of charity lease, in respect of, 544.

## COMPLICATION.

- account, in, relief granted in equity on legal title, 886.
- trust, of, takes case out of Statute of Frauds, sect. 10, 802, 827.

## COMPOSITION. See DEBT, trust for payment of ; CREDITORS' DEED.

- creditors, with, trustee making, whether disqualified for office, 847 note (c).
- debts, of, powers of trustees to effect, 590 *et seq.*
- terms of, in creditor's deed must be strictly observed, 513.

## COMPOUND INTEREST.

- tenant for life advancing fine for renewal of lease, allowed to, 373.
- trustees when charged with, 341, 342, 343.

## COMPROMISE.

- Attorney-general, with, in accounts of charitable trusts, 935.
- claims against estate, of, power of trustees to effect, 591, 592.
- married woman, on behalf of, jurisdiction of Court to sanction, 926.

[The paging refers to the ["\*"] pages.]

# COMPULSORY.

payment into Court, when directed, see Chap. XXXI. sect. 4, 976 *et seq.*  
See PAYMENT INTO COURT.

# COMPULSORY CHURCH RATE ABOLITION ACT, 1868.

church trustees appointed under, 542.  
may invest in government or real securities, 316.

# CONCEALMENT. See FRAUD.

breach of trust, of, makes co-trustee liable, 273, 274.  
fraud, of, prevents bar to equitable relief, 868, 875, 878.  
right to estate, of, account carried back to accruer of title, 891.

# CONCURRENCE.

cestui que trust, by, in breach of trust, 918 *et seq.*  
trustee, by, in sale with other vendors, 430, 435, 619, 620.

# CONDITION.

common law, is part and parcel of the, 34.  
legacy charged on devise by way of, if condition fail sinks for devisees benefit, 157.  
married woman may fulfil, 34.  
trust, when created by conditional words, 140.

# CONDITIONS OF SALE.

trustees, on sale by, what conditions proper, 435, 436,

# CONFIDENCE.

personal, at first held indispensable in cases of trust, 2.  
but *secus* in later times, 9.  
trust in what sense said to be a confidence, 13, 14.  
words expressing, may raise a trust, 131.

# CONFIRMATION.

breach of trust, of, by *c. q. t.*, 497, 498, 924 *et seq.*  
infant, by, 497, 923, 925.  
married woman, by, 497, 925 ; where restrained from anticipation, 497, 925, 926.

# CONFLICT.

duty, of, in trustee, 630.  
rules of law and equity, between, the latter prevail, 574.

# CONSENT.

breach of trust, to, by *c. q. t.*, effect of, 918 *et seq.*  
direction to convert with consent of A., held imperative, 948.  
discharge of trustee, with consent of *c. q. t.*, 645.  
discretion, trustees must exercise, notwithstanding requisite consent given, 291, 318.  
infant, of, ineffectual, 742.  
investment, to, under statutory powers, 318, 319, 329.  
lord of manor, of, to vesting order, 1025.  
married woman, of, to investment, when and how to be given, 318, 329.  
to transfer to husband may be revoked, 742.  
new trustee, of, to act, 1030, 1031.  
power to be exercised with, of *c. q. t.* where one dies, 604.  
previous to act, must be, not subsequent, 318, 319.  
purchase to be made with, direction for, effects conversion, 948.  
tenant for life, of, to investment, 311, 318.  
to exercise of powers of trustees when required under Settled land Acts, 470, 622 *et seq.*  
trustees, of several, to investment, 318.

# CONSIDERATION.

confirmation, how far necessary to support, 497.  
existing debt, when a sufficient, 515.

[The paging refers to the [" pages.]

# CONSIDERATION—*continued*

- instrument under seal, if voluntary, not enforced in favor of volunteer, 80.
- meritorious, agreement or imperfect trust founded on, how far enforced, 81.
  - assignment by felon is not supported by, 28.
  - parent cannot urge, against child, 81 note (a).
  - voluntary settlement not supported by, 76, 77, 81, 82.
- nominal, will not prevent resulting trust, 144.
- release or waiver, for, what sufficient, 924, 925.
- subsequent, voluntary bond or covenant may derive support from, 81.
- trust perfectly created, is not necessary for, 67.
- valuable, where it exists, trust not averrable, 51, 52; trust enforced, 67.
  - deed founded on, may be void as against creditors, 78.
  - expense incurred in respect of property amounts to, 75.
  - formalities of minor importance, where trust is founded on, 67.

# CONSOLIDATION OF MORTGAGES, 330, 593. See MORTGAGE.

# CONSTRUCTION.

- devise, of, to uses, 219.
- legal estate, as to, taken by trustee, 212 *et seq.* See LEGAL ESTATE.
- powers, of, 601 *et seq.* See POWER.
- trusts, of, governed by same rule as legal estates, 109.
  - charities, for, 531 *et seq.* See CHARITY.
  - executory in marriage articles, 112 *et seq.*; in wills, 117 *et seq.* See EXECUTORY TRUST.

# CONSTRUCTIVE NOTICE, 709, 923. See NOTICE.

# CONSTRUCTIVE TRUST, Chap. x., 180—195.

- acquiescence, remedy of *c. q. t.* when barred by, 186.
- agency agreement, trustee procuring renewal of, to his own firm, 186.
- agent acquiring advantage for himself constructively a trustee, 187, 191, 279, 642.
  - but agent of trustee is not constructive trustee for *c. q. t.*, 191, 482, 641, 642.
- allowance for management in cases of, 629.
- assuming to act as trustee, by reason of, 904.
- attorney violating his duty, held bound by a constructive trust, 191.
- bankruptcy of trustee, how affected by, 239.
- Bill in Parliament, money paid to tenant for life for not opposing, 190.
- costs, order to sell estate for payment of, whether it creates a trust within the Trustee Acts, 1025, 1026, 1040.
- decree for sale, person to convey under, is trustee, 1025, 1026.
- doctrine of, explained, 180.
- equitable waste, in cases of, 188.
- executor, when a constructive trustee, 1812.
- factor acquiring advantage for himself is constructive trustee, 187.
- fine, when barred by, 858, 866.
- fraud by heir, devisee or legatee, when it raises, 61.
- fraud by agent or attorney, effect of, 191, 192.
- Frauds, Statute of, how far applicable to, 194, 193, 194.
  - distinction between trusts arising on a will and on a conveyance, 194.
- implied trust and trust by operation of law, distinguished from, 108 note (1).
- laches when a bar to enforcement of, 186, 863, 864, 872.
- lease obtained under cover of tenant right, 861; and see *infra*, **renewal**.
- Limitations, Statute of, runs in favor of constructive trustee, 877, 878.
- mesne* rents and profits, and sub-fines, trustee renewing lease accounts for, 185.
- mortgagee in possession, how affecting, 190.
  - with notice of, is bound thereby, 858, 861.
- notice of trust, constructive trust by reason of, 192, 193, 858. See NOTICE.
- partner acquiring advantage for himself, constructively a trustee, 187, 914.

[The paging refers to the [\*] pages.]

### CONSTRUCTIVE TRUST—*continued*.

- payment into Court by constructive trustee; when ordered, 978.
- profit, person in fiduciary character, making, by his fiduciary position is constructively a trustee, 180, 187, 275 *et seq.*
  - but partners of trustee are not liable as constructive trustees for profits made by trust money, 914.
- purchaser with notice of, is bound, 858.
- renewal of lease**, 180 *et seq.* See RENEWABLE LEASEHOLDS.
  - executor or trustee; by, 180.
  - expenses of, 184; how to be borne, 366 *et seq.*
    - how far annuitants should contribute to fine, 184.
    - trustees' lien for, 184.
  - mortgagee, by, 181.
  - tenant for life, by, or other person having partial interest, 181, 363.
  - trustee cannot sell right of, 182.
  - yearly tenant, by, 181, 182.
- resulting trust, Chap. IX. sect. 1, 143—162. See RESULTING TRUST.
- reversion, purchase of, by trustee, 186.
- salmon fishing, grant of, by Crown to trustees, 190.
- solicitor, acting on instructions, is not affected with, 767.
  - violating his duty, *secus*, 191.
- time, may be barred by lapse of, 863.
- title deeds, holder of, how far constructive trustee for remainderman, 192.
- Trustee Act, within, what is, 1011, 1012.
- vendor of shares after contract, affected with, 1011.
- volunteers and purchasers with notice from trustee, remedy against, 185.
- waste committed, in respect of, when constructive trust arises, 187 *et seq.*
  - See WASTE.

### CONTINGENT INTEREST.

- costs of action by party claiming, 351.
- equitable *c. q. t.* may assign, 10, 692.
  - owner of, entitled to have it secured, 854; *secus* where possibility only, 854, 855.
  - costs of action for, 351.
- lands, in, alienable under 8 & 9 Vict. c. 106, 955 note (d).
- married woman, of, is alienable by her, 779.
- payment into Court at hearing when ordered, 981.
- trustee or mortgagee, of, power of Court to deal with, under Trustee Acts, 1014 *et seq.*

### CONTINGENT LEGACY.

- portion not satisfied by, 407.

### CONTINGENT REMAINDER.

- abolished and re-enacted, 381.
- destruction of, how formerly possible, 121, 380 *et seq.*; how now, 121, 383, 384.
- Fines and Recoveries Act, effect of, as to, 381, 382.
- freeholds, of, where legal, formerly required support of particular estate, 84.
  - but not now, if capable of taking effect as executory limitation, 383, 384.
- but equitable estates never required such support, 85.
- legal limitations not construed as equitable in order to protect, 384.
- trustees for preserving, duties of, Chap. XVI. 380—384.
  - limitation to, how usually framed and object of, 380, 381.
    - "and their heirs," whether it can be cut down, 217.
    - whether necessary since 8 & 9 Vict., c. 186 . . . 121, 383.
  - special trust to preserve not a use within Statute of Uses, 210.
- may purchase trust property, 485.
- receiver, may be, 280.
- waste, duty of, to prevent, 121, 383.

[The paging refers to the [\*] pages.]

**CONTINUANCE OF TRUST.**

power during, 605.  
"continuing" trustee, 658, 664.

**CONTRACT.**

assignment of equitable interest does not operate by way of, 73.  
charging lands possessed at particular time raises implied trust, 140, 141.  
conditional on approval of Court. how, and when to be entered into, 422 *et seq.*, 501.  
conversion of property by contract for sale or purchase, 939, 943. See **CONVERSION**.  
informal trust for value enforced as, 67.  
lands abroad, as to, when enforceable, 48, 49.  
married woman, by, as to separate property, 759, 760.  
    under Fines and Recoveries Act, 645.  
    under Married Women's Property Act, 1882, 760, 761.  
private, trustees may sell by, 343.  
purchase, for, on death of purchaser executor paid price but heir entitled to purchase, 943; *secus*, now, *ib.*  
remuneration, for, by trustee, 631, 632.  
sale, for, 141, 142, 939, 943. See **SALE**.  
    raises implied trust, 141.  
    on death of vendor, land descends to heir but purchase money goes to executor, 943.  
settlement, for, of particular property or property acquired during coverture raises implied trust, 140.  
trustee for purchase may enter into, 499.  
trustee for sale, by, sanction of Court when requisite to, 422. See **SALE**.  
voluntary, under seal, effect of, 81, 82.

**CONTRIBUTION.**

charities founded by voluntary, trusts of, how expounded, 533.  
co-trustees, amongst, on breach of trust, 909  
    claim for, may now create specialty debt, 909.  
    none in case of fraud, 253.  
    *secus* in favour of trustee in bankruptcy of bankrupt trustee, 916.  
mortgaged estates, several, by, to discharge of incumbrances, 717 *et seq.*  
renewable leaseholds, to fines on renewal of, 371 *et seq.* See **RENEWABLE LEASEHOLDS**.  
unequal, by joint purchasers, raises implication of tenancy in common, 165.

**CONTROL.**

powers, how far Court will control, 613 *et seq.*  
trustee must not put trust property out of his own, 296, 297, 337.  
    retiring, should not part with, until successor appointed, 654.

**CONVENIENT SPEED.**

what it means, 289.

**CONVERSION.**

application for conversion of securities, on whom to be served, 309, 311.  
bank shares, duty of trustees to convert, 289.  
contract for sale or purchase, by, 806, 943.  
**Court**, sale by order of, when conversion is effected by, 151, 152.  
    discretionary power of sale, where trustees have, 152.  
    infant's property, as to, 151.  
    Lands Clauses Act under, 152.  
    lunatic's property, as to, 151.  
    Partition Act, 1868, under, 151.  
descent, course of, affected by, 824.  
discretion of trustees as to, Court does not interfere with, 298, 304.  
    how to be exercised, 428.

[The paging refers to the ["] pages.]

**CONVERSION**—*continued*.

doctrine of, when directed by will, 150, 953.

**election** to take property in unconverted state, 690, 953 *et seq.* See **ELECTION**.

land directed to be converted into money, 690, 955.

money, into land, 690, 954.

how presumed or expressed, 961 *et seq.*

what persons are capable of electing, 953 *et seq.*

express trust for, must be strictly pursued, 298.

foreign bonds or stocks, duty of trustee to convert, 288, 289.

imperative direction when necessary in order to effect notional conversion, 947, 948, 951, 952.

improper, of investments, liability of trustee for, 334, 336. See **INVESTMENT**.

**income accruing before conversion**, application of, as between tenant for life and remainderman, 301.

accumulation and investment, where there is direction for, tenant for life takes income from end of first year, 301.

where investment directed he takes from testator's death, if funds then invested, otherwise from time of investment if made in first year, 301, 302.

discretion, where trustees have, as to time of conversion, 304

proportion allowed to tenant for life, how determined, 303.

reasonable fruit of property, tenant for life entitled to, 303.

refund, tenant for life must, if he takes undue proportion, 334.

and if he is insolvent, *semble* trustees liable, 335.

reversionary, where property to be converted is, 305.

India, assets in, duty of trustee to convert, 435.

infant's property, of, when authorized, 967 *et seq.* See **INFANT**.

**land directed to be converted into money**, 949, treated as money, *ib.*

alien may take proceeds, 950.

charity cannot take, 950, 951.

election to take, as land, 690, 955 *et seq.* See **ELECTION**.

felony, proceeds forfeitable for, if land in fact sold, 950.

*secus* after expiration of punishment, 950.

gavelkind lands, course of descent of, after conversion, 824.

general bequest of personal estate, passes by, 949.

heir, right of, to undisposed of proceeds of sale, 149, 150.

imperative, direction must be, in order to effect conversion, 951.

judgment not binding on, 797 *et seq.*

mortgagee selling under power of sale, who entitled to surplus proceeds, 952.

where mortgagee is trustee for sale, 952.

next of kin have no right where land is "at home," 949, 950.

land not considered at home if actually conveyed to trustees, 950.

option to purchase, effect of, 952

personal representative of party entitled, land devolves on, though conversion postponed, 949.

probate duty, is subject to, 949.

rents before conversion, how applicable, 949.

leaseholds, trustee when bound to convert, 298, 299, 370.

tenant for life of residue, to what income entitled where leaseholds unconverted, 304.

long annuities, duty of trustee as to conversion of, 298, 300, 334.

lunatic's property, of, when authorized, 962 *et seq.* See **LUNATIC**.

**money directed to be laid out on land**, 939, treated as land, *ib.*

curtesy, is subject to, 939.

devise of "lands," passes by, 941.



[The paging refers to the [\*] pages.]

**CONVERSION, money directed to be laid out on land—continued.**

- dower, quare whether formerly subject to, 939, 940; is now, 940.
- election to take, as money, 690, 954 *et seq.* See **ELECTION**.
- escheat, not subject to, 940.
- forfeiture, not subject to, on conviction for felony, 950.
- so where paid into Court under Act of Parliament, 950.
- heir of *c. q. t.* when entitled to, 941 *et seq.*
- heir of settlor or covenantor, when entitled as against his personal representative, 942 *et seq.*
- heir entitled if any person has an equitable interest, 942.
- secus*, if money is "at home," 944.
- hotchpot, not brought into, by child receiving orphanage share, 941.
- imperative direction must be, in order to effect conversion, 947.
- so considered where uses declared exclusively applicable to real estate, 947.
- notwithstanding power to invest on other security, 947.
- direction to convert at "request," held imperative, 948.
- judgment, is bound by, 941.
- legacy duty, is subject to, 941.
- next of kin of settlor, right of, to undisposed of interest in the money, 152, 153.
- whether resulting interest results as realty or personalty, 152.
- question is determined by actual character of the property in equity at the time when it results, 152.
- personal assets, not accounted, and (formerly) not liable to simple contract debts, 940, 941.
- will of *c. q. t.*, how affected by, 940, 941, 962.
- mortgage security, whether trustee or executor bound to convert, 291, 300 note (d).
- option to purchase, whether exercise of, effects retrospective conversion, 952.
- not as between vendor and purchaser, 952 note (c).
- optional direction for, effect of, 947, 948.
- order for sale in administration action operates as, 951.
- partnership, share in, not immediately convertible, rights of tenant for life of residue in respect of, 304.
- personal property given in succession, duty of trustee to convert,** 298 *et seq.*
- where property wasting, 298, 299.
- where property not wasting, but investment not authorized by Court, 300.
- where property cannot be profitably converted, tenant for life, takes interest on value, 304.
- where specifically given, or intention shown that property should be enjoyed in specie, *secus*, 299, 300.
- personal security, of investment on, 290, 291.
- postponement of, by trustees, under discretionary power, 250.
- reconversion, implied trust for, 433, 434.**
- by election of *c. q. t.*, 953 *et seq.* See **ELECTION**.
- renewable leaseholds, of, by trustees, 370.
- rents before conversion, tenant for life entitled to, 949.
- residuary property, of, when proper, 298 *et seq.*
- retrospective, by exercise of option, 952.
- reversionary interest, of, in favour of tenant for life, 305.
- securities, duty of trustees to convert, 287 *et seq.*
- shares in canal, insurance and railway companies, of, 289, 290.
- in unlimited companies, of, 289, 290.
- specie, direction for enjoyment in, effect and sufficiency of, 299, 300.
- specifically bequeathed property, of, 299, 300.

[The paging refers to the [\*] pages.]

# CONVERSION—*continued*.

- tenant for life and remainderman, as between, 301 *et seq.* See *supra*, *income*.
- time for conversion of securities by executors or trustees, 289, 299.
- tortious, of trust estate by trustee, 240, 892 *et seq.*, 963.
  - does not affect rights of *c. q. t.*, 892; infant, 967; lunatic, 963.
  - right of *c. q. t.* to follow trust estate, 240, 241. See *BREACH OF TRUST*.
- trustee, by act of, not permitted to vary rights of *c. q. t.*, 963.
- unauthorized investment, of, 300.
- wasting property, trustee bound to convert, where given to persons in succession, 298, 300.
- secus* where intention that property should be enjoyed in specie, 299, 300.
- will, conversion confined to purposes of, 150, 953.

# CONVEYANCE.

- cestui que trust, right of, to call for conveyance, 684 *et seq.* See *infra*, *trustee*.
- Court, by order of, under Trustee Acts, 1020. See *TRUSTEE ACTS*.
  - form of, 447, 1020.
- Court of Common Pleas, under order of, 35 note (c).
- decree for, makes legal owner a trustee within the Trustee Act, 1026.
- dower, declaration to bar, effect of, 737.
  - uses to bar, effect of, 738.
- equitable estates, of, usual form of, 693; precautions in, 701 *et seq.*
- executor when entitled to call for, from heir, 943.
- fraudulent intention of grantor, effect of, 145.
- "grant," effect of, in operative part, 441, 687.
- mistake by grantor, effect of, 145.
- new trustees, to, 650 *et seq.* See *NEW TRUSTEES*.
  - not necessary for completion of valid appointment, 650.
- parties to, when *c. q. t.* should join in, 447.
  - when administration action is pending, 449.
  - trustee to bar dower when a proper party, 687, 688.
- Settled Land Act, under, by beneficial owner, 685, 686.
- refusal to convey, power of Court to make vesting order in case of, 1041.
  - See *TRUSTEE ACTS*.
- revocation of will by, 722.
- Settled Land Acts, of land purchased under provisions of, 567, 571.
- sole trustee, by, 431.
- trust to convey is special trust, 210.
- trustee, by, of legal estate.
  - appointment of new trustees, on occasion of, 650 *et seq.* See *NEW TRUSTEES*.
  - assignee of *c. q. t.*, on direction of, 692.
  - cestui que trust, on direction of, 684 *et seq.*
  - compellable to convey in parts, whether he is, 685.
  - costs of, 688.
  - description, by what, trustee bound to convey, 685.
  - form of, 685, 687.
  - liability of trustee refusing to convey, 685, 686, 692.
  - lien of trustee for expenses, priority of, 639.
  - tenant in tail, not bound to convey fee simple to, 685.
  - trustee of equitable interest, to, 688.
  - undivided share, to owner of, 685 note (g).
- trustee, by, under trust for sale, 441 *et seq.* See *SALE*.
- trustee, to, on sale, how to be framed, 505 *et seq.*
- vesting order operates as, 1014.
  - may be made notwithstanding conveyance is obtainable, 1031.

[The paging refers to the [\*] pages.]

CONVEYANCING ACT, 1881.

- acknowledgment under, of right to production of deeds, 443, 444.
- consolidation of mortgages abolished, 330
- contract for sale of land, stipulations implied in, 500.
- covenants by trustees when implied, 442, 444.
- debts and claims, power of trustees or executors to compound, &c., 591, 592.
- disclaimer of power, 607.
- "grant," use of word, in conveyance not necessary, 687.
- infant, maintenance of, powers of Act as to, 582, 584.
  - management of land of, during minority, powers as to, 129, 578, 579, 580.
- long term of years, conversion of, into fee simple, 328, 596, 784.
- new trustees, power of appointing, conferred by Act, 648, 1030.
  - application of power to previous settlements, 648, 649.
  - number of trustees, augmentation or reduction of, 659, 663, 664.
  - vesting of property in new or continuing trustees, 652, 653.
- payment of purchase-money to trustees, 448.
- power of attorney, duration and revocability of, 353, 354.
- powers conferred by, to be deemed proper powers, 129.
- powers of sale conferred by, 427, 431, 432, 435, 436.
- receipts, power to give, conferred by, 452.
- release of power, by donee, under sect. 52, 610.
  - section does not apply to a power coupled with a duty, 610.
- restraint against anticipation, discharge of, by Court, 785, 786.
- survivorship of trust or power under sect. 38, 612.
- title, proof of, to be made on sale of land, 439.
- trust estates, devolution of, under sect. 30, 204, 226, 233.
- undertaking under, for safe custody of deeds, 444.
- vendor, personal representative of, empowered to convey, 1011.

CONVEYANCING ACT, 1882.

- separate set of trustees, appointment of, of part of trust property, 607.

CONVICT.

- administrator of property of, appointed by Crown, 29.
- definition of, 28.
- interim curator in absence of administrator, 29.
- may not alienate property, 28.
- may pay debts, 29.
- revesting of property, 29.

CONVICTION.

- felon, of, effect of, on property, 27, 28, 818 *et seq.*; under 33 & 34 Vict. c. 23, 28, 821. See FORFEITURE.
- trustee, of, 249; does not work forfeiture of trust estate, 1036.
- appointment of new trustee on, 1043, 1044.

COPIES.

- accounts, of, whether *c. q. t.* entitled to, 691.
- deeds, of, what copies new trustees are entitled to, 670.
- documents, of, whether *c. q. t.* entitled to, 680.
- voucher, of, whether *c. q. t.* entitled to, 449.

COPYHOLD.

- admission to, fine on, 235. See *infra*, fines.
  - in excess of surrender how far void, 236.
- appointment of person to convey, under Trustee Acts, 1025.
- assets, were formerly not, 825; unless blended with freeholds in one mortgage, 800 note (1).
- secus* now under 3 & 4 Will. 4, c. 104, 827.
- conditional fee in, where no custom to entail, 47.
- Court, assurance by order of, under Trustee Acts, 1019, 1025.

[The paging refers to the [\*] pages.]

**COPYHOLD**—*continued*.

- covenant to surrender, covenantor a trustee under Trustee Acts, 1011.
- custom to entail, 47.
- customary freeholds are in fact privileged copyholds, 248.
- descent of, same in trust as legal estate, 47, 824.
- devise of legal interest in, formerly by will unattested and unsigned, 721.
- of equitable interest, 721.
- nuncupative will of, whether valid declaration of the uses of a surrender, 53 note (c).
- disclaimer of, to avoid payment of fine, effect of, 237.
- Dower Act does not affect, 733, 738.
- enfranchisement of, power of trustee to effect, 796.
- purchaser not entitled, to proof of title to make, 439.
- entail of legal and equitable estate in, where possible, 47.
- where no custom to entail, how to be settled, 47, 48.
- equitable, how barred, 694.
- equitable interest in, follows devolution of legal estate, 47, 824; how devisable, 721, 722.
- escheat of, properly speaking, cannot take place, 248.
- execution against, by *elegit*, 803.
- fin**es on admission of trustee to, how and when payable, 235 *et seq.*
  - charged on trust estate, how raised, 379.
  - income of lord, treated as, 682.
  - incorporated charities, how payable by, 548.
  - new trustee appointed by Court, on admission of, 1025.
  - payment of, not a condition precedent to admission, 235.
  - rate of, where co-trustees, 236.
  - tenant for life and remainderman, how to be borne as between, 378, 379.
  - trustee for sale, on death of, pending contract, how payable, 142.
  - trustee paying, is entitled to reimbursement, 238.
  - trustee of a term of years, on admission of, 236.
- Frauds**, Statute of, declaration of trust of copyholds, is within, 53.
  - but not surrender to uses, 53 note (c).
  - nor devise of legal estate, 721, *quære*, as to equitable interest, 722.
- free-bench, estate of trustees subject to, at law, 221.
- equitable interest not subject to, 733.
- heir, customary, of trustee whether competent to execute trust, 233.
- lord, when bound to admit, 284, 285.
- heriot when payable on decease of trustee, 235, 136.
- investment on mortgage of, by trustees, 328.
- joint tenants, fines on admission of, 236, 237.
- legal estate in, when passing under devise to trustees, 211, 212, 216, 218.
- where freeholds and copyholds coupled together, 216, 217.
- lives, for, how they devolve under 1 Vict. c. 26, sect. 6 165.
- how far purchase of, in name of stranger, raises resulting trust, 165.
- how far in name of child, 172.
- trustees should not purchase, 503.
- lord bound by entry of trust on court roll, 248.
- consent of, to vesting order, 1025.
- lunatic of, effect of enfranchisement of, 966, 967.
- new trustee, fine payable on admission of, 235.
- vesting of copyholds in, 652, 654.
- purchase trustees with power of, should not purchase copyholds for lives, 503.
- remainderman, admission of, rights of lord as to, 236.
- resulting trust on purchase of, 165, 172.
- settlement of, to correspond with limitations of freeholds in strict settlement, 47.
- how to be effected where no custom to entail, 48.

[The paging refers to the [" ] pages.]

**COPYHOLD**—*continued*.

surrender formerly required to pass legal estate by will, 721.  
 on what principle supplied in equity, 721, 722.  
 termors for years, rights of lord as to admission of, 237.  
 trust, entry of on court roll, effect of, 248.  
 trust, may be the subject of, 47.  
 trustee of, within Trustee Act, 1850, 1011.  
 uses of, are not within Statute of Frauds, 53 note (c).  
 vesting order as to, power of Court to make, 1019, 1025, 1041. See  
 TRUSTEE ACTS.  
 Wills Act, subject to, 722.

**CORONER.**

cestui que trust in possession at one time voted for, 234, 681.  
 trustee in possession votes for, 234, 235, 681.

**CORPORATION.**

alienation of property by, 22, 31.  
 attaching property of, mode of, 936.  
 breach of trust by, 530, 531, 902, 936. See CHARITY.  
 bye laws, may make, but not so as to defeat object of foundation, 535.  
 capacity of, to stand seised to use or to be trustee, 2, 9, 14,  
 cestui que trust, may not be, of lands, without licence of Crown, 44, 95.  
 charity, incorporation of trustees for, 547, 548.  
 charity, trustees for, appointed in place of corporation, 851, 852.  
 constructive notice, distinction between corporations and individuals as  
 affected by, 936.  
 costs, corporation being trustees, when ordered to pay, 994.  
 creation of trust by, 22.  
 Crown, licence of, necessary for conveyance to corporation upon trust, 32 :  
 or upon trust for corporation, 44.  
 eleemosynary, where Crown visitors of, visitatorial power committed to  
 Lord Chancellor, 530.  
 equity, amenable to Court of, 31.  
 loan to, trustee negotiating for, should not hand money to broker 255.  
 municipal, are trustees of property under Municipal Corporations Act,  
 22, 31.  
 and cannot alienate without consent of Lords of Treasury, 22, 31  
 mayor of, cannot profit by office, 279.  
 notice not readily imputed to, 936.  
 stocks of, investment in, by trustees, 320.  
 "true owner," cannot consent as under Bankruptcy Act, 244.  
 trust for, 44, 95.  
 trustee may be, 9, 31.  
 use, could not stand seised to, 2, 31; *secus* as to trusts, 31.  
 visited by Crown, through High Court of Justice, 530.

**CORPUS.**

costs of application for appointment of new trustees payable out of, 1038.  
 costs under Trustee Relief Act whether payable out of, 1003, 1004.  
 what is to be regarded as, and not income, 305, 682, 683, 914, 915. And  
 see APPORTIONMENT.

**COSTS.** Chap. XXXII. sect. 5, 985—995.

accounts, of taking, trustee entitled to, 991.  
*secus*, in case of misstatement, refusal to account, or other impropriety,  
 691, 990 *et seq.*  
 Act of Parliament, of application for, 536.  
 action, of, when allowed to trustee out of estate, 636, 637.  
 unnecessary, trustee liable for costs of, 350, 993.  
 administration action, of, are testamentary expenses. 546, 636, 644.

[The paging refers to the [\*] pages.]

**COSTS—continued.**

- allowances to trustees, Chap. xxiv 627—644.
  - expenses, for, 634 *et seq.* See **EXPENSES**.
  - time and trouble, for, 627 *et seq.*
- appeal for, when trustee may present, 990, 1003.
- appeal, of, trustee answerable for, 350.
- appointment of new trustee, of improper, 618, 665, 669.
  - under trustee Act, 1029, 1030, 1033, 1038. See **TRUSTEE ACTS**.
- apportionment of, in action against executor of defaulting executor, 992.
- bankrupt trustee, of, 635 note (b), 991, 992.
- Bill in Parliament, of opposing, 580, 636.
- breach of trust, of action for, 909, 989 *et seq.*
- charge and expenses, trustee when allowed, 412, 432, 634 *et seq.*, 987. See **EXPENSES**.
- claim to trust fund, of improper, 349.
- conveyance, of, from trustee to *c. q. t.*, 685, 688.
  - refusal by trustee to make, at direction of *c. q. t.*, 654, 655, 684, 685, 686.
- copies of deeds, &c., of, supplied to trustees, 670, 1003.
- corporation, against, pleading ignorance falsely, 994.
  - or suppressing documents, 994.
- corpus or income, whether payable out of, 1003, 1004.
- co-trustees, contribution between, 909.
- creditors, of, in administration action, 987, 988.
  - as between plaintiff and residuary legatee, 988.
  - as between plaintiff and co-creditors, 988.
- decree, after passing of, trustee cannot get costs, 988.
- deed, of, direction to pay, is implied, 641.
- defaulting trustee, of, 635, 991.
- defendant, trustee made, as necessary party, 985.
- denying falsely claim of plaintiff, trustee pays costs, 993.
- discharge in bankruptcy, trustees entitled to costs from date of, 992.
- disclaiming trustee, of, 198, 988.
  - disclaimer by pleading, 198, 989.
- discretion of Court, are in, 986 note (c).
  - but this does not deprive trustee, &c., of right to costs, 987.
- documents, trustee suppressing, pays costs, 994.
- doubtful construction, in case of, 992.
  - point of law, 992.
- dower trustee, of, as against mortgagee, 985.
- enfranchisement of copyholds, of, may be charged on estate, 596.
- estate, out of, may be given under Trustee Act, 1037.
- excessive, how moderated, 638.
- executor**, of.
  - account, of taking, when disallowed, &c., 994.
  - creditors' action, in, entitled to costs in preference to plaintiff, 986.
    - rule at law formerly different, 986.
  - defaulting executor, of, 992.
  - denying assets falsely, deprived of costs, 993.
    - or relationship of next kin, 994.
  - improperly retaining balances, 992.
  - interest, where he is ordered to pay, as for breach of trust, 994, 995.
  - real estate, right to recover costs out of, where personal exhausted, 986.
  - set-off of debt of, against costs, 635.
  - trustee, of, suing to recover trust estate, 993.
- expenses, allowance to trustee for, 634 *et seq.*, 987. See **EXPENSES**.
- extra, trustee who has been paid between party and party, where allowed, 636, 637.
- fraud, trustee of deed tainted by, whether allowed his costs, 689.
- fund in Court, out of, 986, 987.

[The paging refers to the [\*] pages.]

**COSTS**—*continued*.

- ignorance, trustee falsely pleading, pays costs, 994.
- improper appointment of trustees, of, 665, 669.
- infant, trustee acting for protection of, against parent, 993.
- information, of, relator responsible for, 927.
- innocent trustee, of, guilty trustee ordered to repay, 990.
- interest on, not allowed, 637.
- inventory, trustee neglecting to make, deprived of costs, 207.
- leasing charity lands with covenants for private advantage, trustee deprived of costs, 542, 543.
- legatee's suit, in, 988.
- lien of solicitor for, 703. See **SOLICITOR**.
- lien of trustee for expenses, 639, 640. See **LIEN**.
- prevails over costs of administration action, 639.
- lunatic mortgagee or trustee, of vesting order as to estate of, 1037.
- misconduct, trustee guilty of.**
  - loses right to reimbursement, 636.
  - pays costs or portion thereof, 990 *et seq.*
  - where misconduct discovered in progress of proceeding, 991.
  - where proved only in part, 990, 992; or trivial, 991, 992.
  - purchase of trust property by trustee at auction, without fraud, 991.
- misstatement of accounts by trustee, 993.
- mistake, trustee committing, when ordered to pay, 991.
- neglect of trustee, of proceedings caused by, 350, 546, 636, 990.
- trustee neglecting to make inventory deprived of costs, 207.
- new trustees, of appointing, unnecessarily or improperly, 618, 665, 669, 1035.
- under Trustee Acts, 1029, 1030, 1033, 1038.
- official liquidator not entitled to same latitude as trustee, 991.
- Parliament, of proceedings in, when allowed to trustees, 580.
- party and party**, as between, 985, 987.
- trustee receives, as against stranger, 985, 987.
- and so in action for enforcing invalid trusts, 989.
- payment out of Court, of petition for, where trustee respondent, 985.
- petition, trustee cannot obtain order for costs by, after decree passed, 988.
- plaintiff, of, having no interest or interest which ceases, 351.
- portions, of raising, thrown on estate charged, 412.
- professional charges, trustee not permitted to make, 630, 987.
- purchase, improper, by trustee, of action to set aside, 494.
- purchase, of, by trustees for purchase, 505.
- receiver, expense of, falls on tenant for life, 984.
- priority of costs and remuneration of, 984, 987.
- recovered, how, by trustee as against *e. q. t.* or trust estate, 986. See **EXPENSES**.
- refusal to transfer trust estate, occasioned by, 654, 655, 684, 685, 686.
- re-hearing, none for costs only, 988.
- relators necessary in information on account of, 927.
- retaining balances improperly, trustee fixed with costs, 992.
- retiring from caprice, trustee pays costs, 672; *secus* where retiring on sufficient ground, *ib.*
- sale by trustees to raise costs and expenses, 451.
- sale, order for, to raise costs, whether it creates trust within Trustee Acts, 1025, 1026, 1040.
- vesting order may now be obtained in chambers, 1040.
- scale, on higher, not allowed merely because fund large, 1037.
- separate estate, out of, 643, 762.
- set-off against, for debt of executor, 635.
- set-off for, by executor against legatee, 696.

[The paging refers to the [\*] pages.]

# **COSTS—continued.**

- solicitor's lien, how affected by, 696.
- setting aside deed, of, 989, 990.
- setting up title of his own, or trust different from existing one, trustee pays costs, 994. See 285.
- Settled Land Act, under, trustee may reimburse himself, 636.
- severing in defence, costs of trustees, 260.
- solicitor and client**, as between, 987.
  - allowed in matters between *c. q. t.* and trustee where fund in Court, 987.
  - creditors' and legatees' suits, in, where estate deficient, 988.
  - disclaiming trustee, not allowed to, 988.
  - insurance company, allowed to, paying in under Trustee Relief Acts, 997.
- solicitor, costs of, when trustee, 281 *et seq.*, 987. See **SOLICITOR**.
  - c. q. t.* obtaining taxation against, 637 note (c), 642 note (c).
  - professional charges not allowed to, when trustee, 281, 987.
- specific performance, in action for, trustee when entitled to charge, on estate, 432.
- taxation of, at instance of *c. q. t.*, 637 note (c), 642 note (c).
- tenant for life, incurred by, when allowed to trustees, 636.
- tender of, to party whose appearance is unnecessary, 1002, 1004.
- testamentary expenses, what are, 644.
- trust to pay, how construed, 644.
- trustee, of, as between himself and stranger, trustee on no better footing than ordinary litigant, 985, 986.
  - as between himself and *c. q. t.*, 986 *et seq.*
  - costs, charges, and expenses, when allowed, 412, 432, 634 *et seq.*, 987.
  - not appearing at hearing, may pay costs of day, and have cause re-heard, 988.
  - secus* after decree passed, 988.
  - priority of, 987.
  - where fund in Court, 987.
- trustee when ordered to pay, 346, 985, 989 *et seq.*
- Trustee Acts, under, 1027, 1035, 1037, 1038. See **TRUSTEE ACTS**.
- Trustee Relief Acts, under, 1002 *et seq.* See **TRUSTEE RELIEF ACTS**.
- unfounded claim, of, 349.
- unsuccessful application, of, trustee pays, 985.
- void deed, trustee of, where entitled to costs, 989.

# **CO-TRUSTEES.**

- acknowledgment of debt by one, 259.
- bankruptcy, all must prove in, 259.
- bankruptcy of, liability of co-trustee for costs, 634, 635.
  - proof for trust debt how to be made, 915.
- breach of trust, each is responsible to *c. q. t.* for whole liability and costs, 908 *et seq.*
  - each liable for concealing or permitting, 273.
  - following money into hands of co-trustee, 897.
  - permitting, is liable to be removed, 847.
  - threatened by co-trustee, duty of trustee to prevent, 274.
- cestui que trust one of, cannot hold others responsible for joint breach of trust, 918.
- contribution between, 909, 910.
- conveyance, all must concur in, 260.
- custody of chattels by, 295.
  - of deeds may be committed to one co-trustee, 681.
- delegation of office to co-trustee, 252 *et seq.* See **DELEGATION**.
  - in case of discretionary trust, 257.



[The paging refers to the [\*] pages.]

## CO-TRUSTEES—*continued.*

- disagreeing, Court will exercise power, 835.
- receiver appointed, 983.
- dividends, receipt of, by one co-trustee, 226, 260.
- duties, may not delegate discretionary, to co-trustees, 207.
- following trust money into hands of, 897.
- fraud of, co-trustee not liable for, 253.
- indemnity clause, its effect as to co-trustees, 274, 275.
- investment, in making, should not rely on statement of co-trustee, 265.
- joint, their office is, 258.
  - must jointly give receipts for principal money, 259, 292.
  - but any one may receive dividends or rents, 260.
  - must all prove in bankruptcy, 259.
  - in public trusts majority binds, 259.
- legal proceedings, should not sever in, 260.
- lend, should not, to one of themselves, 316, 325; even where empowered to lend on personal security, 316.
- liability, one not liable for acts or defaults of another, 263.
  - nor for joining *pro forma* in receipts, 264; provided he did not actually receive money, 264, 265.
  - unless money permitted to lie in hands of co-trustee, 265.
- lien for overpayment on interest of co-trustee, 910.
- majority, how far acts of, binding, 259, 260, 540, 547, 592, 597.
- Mercantile Law Amendment Act, how affected by, 909.
- notice to one trustee, effect of, 259, 706.
- payment to, safe course is to pay into bank to joint account, 292, 447, 448, 473, 474.
- professional, unprofessional must not rely on, 207.
- quorum, Court sometimes allows a part to form, 260.
- receipts for money by, 259, 292. See RECEIPT.
  - co-trustee joining in, when liable, 264, 265, 292.
- rents, receipt of, by one co-trustee, 225, 260.
  - but co-trustee having notice of misapplication is liable, 260.
- sale, each trustee liable for conduct of, 424.
- sale to, by co-trustee improper, 503.
- severing in action or defence, costs of, 260.
- solicitor, co-trustee should not rely on, 207, 635.
  - nor in general employ him as solicitor to trust, 281, 282, 635.
- solicitor and counsel should employ the same, 260, 261.
- survivorship of office of, 261, 262.
  - notwithstanding power to appoint new trustees, 262, 263.
- trust money, may not lend to co-trustees, 316, 325.
  - may not permit to remain, in hands of co-trustees, 265, 292.
  - may not trust co-trustee even though a professional person, 207.
  - whether one co-trustee should permit another to receive, 292.

## COUNSEL.

- advice of, trustee acting under, how far protected, 207 note (a), 346, 347, 685.
- cestui que trust entitled to copies of opinions of, 680.
- co-trustees should act by same, 260, 261.
- opinion of, as to disclaimer, trustee entitled to take, 198.
  - as to title, trustee for sale or purchase should take, 432, 500.
  - trustee when bound to produce, 975, 976.
- trustee when allowed fees paid to, 198, 636.

## COUNTY COURT.

- administration of trusts in, where value not more than £500, 362.
- jurisdiction of, in charities whose income under £50, 852 note (d), 932.
  - appeal from, to Chancery, when, 932.
- payment into, of trust funds not exceeding £500, 361.

[The paging refers to the [\*] pages.]

# COUNTY COURT—*continued.*

proceedings in, under Trustee Acts, 1045.  
under Trustee Relief Acts, 998, 1008.

# COURT.

Act of Parliament, sanction of Court to application for, 536.  
advice of, how obtained by trustee, 618 *et seq.*  
appeal of, constitution of, 17.  
jurisdiction of judges of, in lunacy, 1039.  
approval of, duties of person seeking to obtain, 487.  
assignment of fund in, 711.  
Common Pleas, of, could dispense with husband's concurrence in execution of deed by wife, 35 note (c).  
conversion by order of, 151, 152.  
discretion of trustee, when Court will interfere with, 523, 613 *et seq.*  
equity, trustee cannot come into Court of, for own benefit, 284.  
fund in, stop-order on, priority by obtaining, 711, 712.  
investment by, on mortgage formerly not ordered, 313; *secus now*, 308.  
leave of, to concur in sale, 619, 620.  
leave of, to institute or defend action, 597.  
mortgage, may direct money to be raised by, 427.  
power, when and how Court will exercise, 834 *et seq.*  
powers of trustee, control of Court over exercise of, 613 *et seq.*  
purchase by trustees of fund in, 505.  
sale by, conduct of, to whom given, 449, 450.  
conversion when effected by, 151, 152.  
debts, for payment of, jurisdiction to order, 454.  
order for, binds equitable interests, 1010.  
purchaser under, may apply for appointment of new trustee, 1032.  
surplus proceeds of, devolution of, 151.  
sale to trustees for sale authorized by, 488, 489.  
sanction of, when required to exercise of powers by trustees, 350, 442, 449, 501, 503, 536, 617, 618, 669.  
Settled Land Acts, powers of Court under, 560, 566, 568, 569, 570.  
Supreme Court of Judicature, constitution of, 17.  
trust money may be paid into, 360. See PAYMENT INTO COURT.  
trustee appointed by, powers of, 471, 472.  
paying under order of, not entitled to release, 359.  
validity of acts of, which Court would sanction, 573.

# COVENANT.

annuity, to secure, how far a charge on covenantor's property, 141.  
cestui que trust, action by, to enforce, 853.  
conversion by, 939, 942.  
Conveyancing Act, 1881, provisions of, as to covenant binding heirs, 206.  
copyholds, to surrender, makes covenantor trustee within Trustee Acts, 1011, 1041.  
executor, by, to whom lease granted for benefit of estate, 442 note (i).  
future property, to settle—  
avoidance of, under Bankruptcy Act, 1882, 80.  
execution creditor of settlor, right of, as against *c. q. t.*, 224.  
following money into land purchased by covenantor, 896, 897.  
implied trust arises by virtue of, 141.  
infant *feme covert*, by, 39.  
trustee bound to enforce, 288, 902.  
trustee entitled to assume due performance of, 207.  
"grant" under Lands Clauses Act, implies covenants for title, 687.  
"grant bargain and sale" under Yorkshire Registry Acts, 687.  
heir or devisee when bound by, 206.

[The paging refers to the [\*] pages.]

**COVENANT**—*continued*.

- incumbrances, that property is free from, effect of, 718, 719.
- indemnity, for, against covenants in lease, when to be given, 444, 445.
- infant by, effect of, 39.
- land, to convey, on trust to sell, next of kin when entitled to benefit of, 949, 950.
- lease, in, for trustees' private advantage, improper, 542, 543.
  - money, to lay out, in purchase of land, heir when entitled to benefit of, 942 *et seq.*
  - performance of, evidenced by receipt for rent, 439.
  - renewal of lease, for, trustee does not enter into, 425, 443 note (1).
  - trustee legally liable on, 238.
- neglect by trustee to enforce, liability for, 288, 902.
- production of title deeds, for, right of purchaser to, 438, 443, 444.
- quiet enjoyment, for, effect of, as exoneration of charge, 718.
- satisfaction of covenant by subsequent gift or legacy, 401. See **SATISFACTION**.
- seised, to stand, to use of stranger in blood, not enforced in equity, 80.
- stock, to transfer, liability of trustee for not enforcing, 902.
- trustees for sale, by, for title, 441, 442.
  - to produce deeds, 438, 443, 444.
- voluntary**, carries consideration at law, 80.
  - cestui que trust, action by, to enforce, 853.
  - not specifically executed in equity, 80, 947.
  - may acquire support from valuable consideration *ex post facto*, 81 note (f).
  - payable out of assets before legacies, 80, 81, note (f).
  - to lay out money in land not enforceable by heir, *semble*, 947.
- words, what, suffice to give rise to, 206.

**COVERTURE**. See **MARRIED WOMAN**.

**CRANWORTH'S (LORD) ACT**, 451, 583, 647, 648. See **LORD CRANWORTH'S ACT**.

**CRASSA NEGLIGENTIA**. See **NEGLIGENCE**.

**CREATION OF TRUST**.

- act of party, by, 21.
- cestui que trust, existence of same, essential, 106.
- charity, in favour of, 54.
- chattels, of, 53.
- copyholds, of, 53.
- deed when requisite for, 52.
- formalities requisite for, under Statute of Frauds, 55 *et seq.*
- imperfect, where some further act is intended, 67.
- intention by settlor to create trust essential, 82.
- lands, of, 53 *et seq.* See **FRAUDS, STATUTE OF**.
- law, by operation of, 21.
- legal interest must be actually vested in trustee where capable of transfer, 69, 70.
  - where property is incapable of transfer, *quære*, 70 *et seq.*
- mortgage money, of, 54.
- parol, by, when effectual, 51, 53, 54, 65.
- parties to, Chap. III. 21—46.
  - settlor, who may be, 21 *et seq.* See **SETTLOR**.
  - trustee, who may be, 29 *et seq.*
- precatory words, by, 130 *et seq.*
- property, what may be subject of, Chap. IV. 47—50.
- testamentary instrument when requisite for, 58, 60.
- transmutation of possession not necessary where trust perfectly created, 67.

[The paging refers to the [\*] pages.]

# CREATION OF TRUST—*continued.*

Wills, Statutes of, how affected by, Chap. v. sect. 3, 57—66.  
writing when requisite for, 55 *et seq.*

## CREDITOR. See DEBT.

acquiescence, when bound by, in purchase by trustee, 496.  
administrator how protected against, 362.  
adoption of trust deed by, 513, 522.  
advertisement for, by executors, 362.  
assets, right of creditor to recover, from legatees, 356, 357.  
business carried on by trustee, rights of creditor of, 639, 640.  
confirmation, when bound by, 498.  
costs of administration action by, 986, 987, 988.  
enforcement of trust by, 515.  
execution by, 794, 795; equitable, 795 *et seq.* See JUDGMENT.  
execution creditor may purchase goods sold under execution, 490.  
    taking trust estate under execution, bound by trust, 224, 245, 247.  
executors, how protected against creditors of testator, 362.  
    rights of creditor as against, 477.  
fraud upon, by agreement for preference, 523.  
laches, when barred by, 923.  
maintenance of debtor, how far entitled to benefit of trust for, 99 *et seq.*  
married woman, of, restraint on anticipation when ineffectual as against, 769.  
    rights of, against separate property, 764, 771, 773. See MARRIED  
    WOMAN.  
*pari passu*, all creditors now rank, 206, 238, 525.  
priority of, over legatee under trust for payment of debts and legacies,  
    523, 524.  
    over person claiming under voluntary bond or covenant, 81 note (f).  
purchase, may, on sale by sheriff, 490.  
receiver when appointed at instance of, 856.  
separate property of married woman, his remedies against, 764, 773. See  
    MARRIED WOMAN.  
settlements, voluntary or otherwise, when invalid as against, 77, 78, 81,  
    82, 518.  
specialty, priority of, 524, 525.  
subsequent, voluntary settlement when defeasible by, 77, 78, 81, 82, 518.  
trust for payment of creditors, 509 *et seq.* See DEBT.  
    when irrevocable, 515, 516.  
    their rights cannot be defeated by means of 99 *et seq.*  
voluntary settlement when void against, 77, 78, 81, 82, 518.

## CREDITORS' DEED. See DEBT, trust for payment of debts.

adoption of, by creditor, 513.  
communication to creditor, effect of, 516, 517.  
disputed debt, 522.  
fraudulent, when, under 13 Eliz. c. 5, 77 *et seq.*, 510, 518.  
general words in, effect of, 510 note (a).  
inspector under, profiting by fiduciary character is constructively a trustee,  
    187, 279.  
mortgagee, proof by, 521.  
new trustees of, appointment of, by Court, 1030.  
time for creditors to come in, 522.  
trustee of, making payment by mistake, not accountable, 349.  
    purchase of trust property by, when permitted, 489.  
    time when he should begin to act, 514.  
whether revocable or irrevocable, 515, 516.

## CRIMINAL ACT.

trustee whether liable for acts of agent or stranger, 294, 295.

[The paging refers to the [\*] pages.]

## CROWN.

- alien, when entitled to benefit of trust for, 45, 95.
- bona vacantia*, Crown can sue for, without inquisition, 95, 96.
  - where *c. q. t.* dies intestate and without next of kin Crown takes residuary personalty, 161, 285.
  - but executor where appointed takes as against Crown, 61, 285.
- cestui que trust*, may be, 43.
- conversion, excluded by doctrine of, 940.
- Court of Equity has no jurisdiction over conscience of, 30.
- debt, extent for, 817, 818.
- registration of, 809.
- search for, on purchase of land, 500, 810, 811, 812.
- escheat, claiming by, whether bound by Trustee Act, 12.
- Exchequer, Court of, jurisdiction of, as affecting Crown, 30.
- executor, right of, to residue as against, 61.
- extent from, what property bound by, 817, 818 See **EXTENT**.
- felon, rights of Crown on conviction of, 27 *et seq.*
- forfeiture, taking by, whether bound by trust, 247.
- Frauds, Statute of, whether bound by, 54.
- gift by subject to, formalities requisite to, 43, 44.
- inquisition when necessary to perfect title of, 95, 819.
- Intestates' Estates Act, 1884, sale under, of real estate to which Crown, entitled, 44, 1040.
- licence of, required to conveyance to corporation upon trust, 32.
  - or conveyance upon trust for corporation, 44.
- parens patriæ*, is, 927.
- prize of war vests in, 22.
- warrant for distribution of, does not constitute Crown trustee, 22.
- recognizances to, registration of, 809 note (e).
- resulting trust in favour of, 22, 161.
- sale of estate of, Trustee Acts extended to, 1040 note (a).
- Settled Land Acts, bound by exercise of powers of, 553.
- statute, when bound by, 55.
- trust, how it may create, 21, 22, 52.
- trustee, anciently could not sustain character of, 2.
  - secus* in modern times, 9, 30.
  - but *quære* as to power of enforcing trust against Crown, 30.
  - nor can Crown be trustee as respects treaty with another sovereign, 30 note (a).
- Trustee Acts extended to trustees of private estates of sovereign, 1013, 1040.
- use, can declare, by letters patent, 52.
- vesting order, when to be served with petition for, 1019, 1031.
- visitor of charity, when Crown is, and how powers exercised, 530.
- will of sovereign, trust may be created by, 22.

## CURTESY.

- adverse possession of stranger excludes right of, 734.
- death of wife, does not arise until, 748 note (i).
- dower distinguished from, 736, 737.
- equitable estate, of, 11, 723.
- not where husband an alien, 733.
- where *feme covert* had equitable seisin, 734.
- notwithstanding trust for separate use, 735, 736.
- money to be laid out in land, 734.
- why curtesy and not dower allowed, 737.
- money to be laid out in land is subject to, 939.
- seisin, what required to give, 723, 733 *et seq.*
- tenant by, anciently not liable to execution of use, 3.
  - but held bound by trust, 9, 10, 12, 15, 246.

[The paging refers to the [\*] pages.]

# **CURTESY—continued.**

powers of, under Settled Land Acts, 553, 554.  
trust estate, of, permitted, 11, 221, 733.  
use, not admitted of, 3

# **CUSTODY.**

title deeds, of, who entitled to, 679 *et seq.*  
trust chattels, of, 294 *et seq.*  
vouchers, of, 449.

# **CUSTOM.**

descent, as to, governs descent of equitable interest, 824.  
gavelkind, of, 25, 26. See GAVELKIND LANDS.  
surrender to use of will, restraining, 721.

# **CUSTOMARY FREEHOLDS.**

copyholds, are now regarded as, 248, 721.  
devise of, how effected, 721, 722.  
equitable interest in, how devised, 722.  
Statute of Frauds, are within, 722.

# **CY PRES.**

marriage articles, under, Court will execute settlement *cy pres*, 113.

# **DAMAGES.**

mere right to, cannot be set off against debt, 701.  
trustee, recovered against, when chargeable on trust estate, 638.

# **DAUGHTER.**

advancement, doctrine of presumption of, applies to daughters, 177.  
"heirs female," "heirs of body" or "issue" in marriage articles include daughters, 114.  
limitation to, how executed, 115.  
younger child, treated as, entitled to portion, 388.

# **DEATH.**

cestui que trust, of, 346.  
presumption of, by disappearance for seven years, 348, 349.

# **DEBENTURES AND DEBENTURE STOCK.**

*choses in action*, are, within Bankruptcy Act, 243.  
distinction between, considered as investment, 319.  
railway company, of, trustees when authorized to invest in, 312, 319, 320.

# **DEBT.**

accumulation of income for payment of, when lawful, 93.  
acknowledgment of, by one trustee, 259.  
assets for payment of, what are, 825 *et seq.* See ASSETS.  
assignable now under 36 & 37 Vict. c. 66, 72; but assignment must be in writing and notice given, *ib.*  
assignee of, bound by equities affecting assignor, 697.  
notice to debtor to be given by, 697, 702.  
bond creditors cannot receive more than amount of penalty, 527.  
breach of trust gives rise to, 906.  
buying up debt on trust estate, trustee disqualified from, 276 *et seq.*  
charge of debts, effect of, as to conferring fee in devises, 218.  
makes land equitable assets, 825.  
power to sell and give receipts when and in whom implied by reason of, 461 *et seq.*  
when barred under Statute of Limitation, 878, 879.  
composition of, by trustee, or executor, 590, 591, 592.  
of his own debt, 479, 480.  
executor, duty of, to discharge debts out of assets, 338.  
executor, from, to estate, duty of co-executor to get in, 273.

[The paging refers to the [\*] pages.]

**DEBT**—*continued.*

executor, sale or mortgage of assets by, for payment of his own debt, 479, 480.

devise to debtor does not create lien on estate, 912.

husband when liable for debts of wife, 790, 793.

imprisonment for, defaulting trustee when liable to, 916 *et seq.*

infant, debts contracted by, for necessities, 521. See **INFANT.**

interest on, when allowed under creditor's deed, 525 *et seq.* See **INTEREST.**

judgment, execution of, against equitable estate, 795 *et seq.* See **JUDGMENT.**

Limitations, Statutes of, debts barred by, not revived by trust for payment, 519. See **LIMITATIONS, STATUTES OF.**

executor may pay, before decree, 590; or retain his own debt, 590.

statute will not run after commencement of trust, 520.

trust to sell and pay debts where no part of produce of sale set apart, 520, 877 note (c).

order of payment of, in administration of assets, 525 *et seq.* See **ASSETS.**  
under trust for creditors, 523 *et seq.*

creditors paid *pari passu* in absence of contrary directions, 524.

creditors paid before legatees, 523, 524.

whether trustee and executor may pay his own debt first, 525.

outstanding, duty of trustees and executors to get in, 287 *et seq.*

payment into Court when ordered on admission of, 980.

purchase of, by trustee or other person in fiduciary position, 276 *et seq.*

real estate liable to payment of, 457.

release of, by trustee or executor, 590, 591, 592.

residue, as between tenant for life and remainderman of, how to be provided for, 302.

retainer of, by executor or administrator, 273, 278, 590.

sale for payment of debts, powers of Trustee Acts in case of, 1025, 1026.

satisfaction of, by subsequent advance or legacy, 405 note (b), 406, 407.

small circumstances sufficient to rebut presumption of, 406.

secret agreement by debtor with creditor, 523.

simple contract, by, 206, 524, 906. See **SIMPLE CONTRACT.**

interest on, when allowed under creditors' deed, 525.

specialty, by, 206, 524, 906. See **SPECIALTY DEBT.**

carries interest to time of payment even though released by creditors' deed, 527.

tenant for life of residue not entitled to enjoyment in specie of, 300.

trade, trustee carrying on, is personally liable for, 238.

**trust for payment of debts**, Chap. xx. 509—527.

accumulation, by way of, excepted from Thellusson Act, 93.

act of bankruptcy, when committed by creation of, 511 *et seq.*

adoption of, by creditor, 522.

assignment executed abroad, 512, 513.

communication to creditor, effect of, 516, 517.

creditor not bound by, in creditors' deed, unless terms strictly fulfilled, 513.

when entitled to benefit of creditors' deed, 522.

debts payable under, 519 *et seq.*

where by deed, debts arising at date thereof, 519.

where by will, debts owing at death of testator, 519; unless contrary intention, *ib.*

order of payment of, 523, 524, 525.

discretion of trustees to admit claims, 523.

equitable assets, land devised upon, is, 825.

executor, where trustee is also, 525.

[The paging refers to the [\*] pages.]

# DEBT—*continued.*

trust for payment of debts—*continued.*

fraud, avoided by, 509.

question of, is one of fact, 511 note (a).

fraudulent conveyance by trader, 510.

fraudulent, when trust is, within 13 Eliz. c. 5, 510, 518

interest, allowance of, 525 *et seq.*

irrevocable, when, 515.

if trustee be himself a creditor, 517.

legacy duty when payable by creditors under, 520.

Limitations, Statutes of, application of, 519, 520, 521, 877 note (c), 878.

mortgagee or other secured creditor, rights of, 521, 522.

personalty, out of, when nugatory, 509, 520, 521.

*post obit trust*, whether recoverable, 518.

repudiation of, by creditor, 523.

resumption by trustees of property under creditors' deed, 523.

revocable, unless communicated to creditors, 516, 517.

nature of revocable trust, 517.

time, trust for creditors who come in within certain, 522.

time within which trustee should execute, 457 *et seq.*

trader and non-trader, distinction between, under old bankruptcy laws, 510.

abolished under recent Act, 514.

trustee, duties of, under, Chap. XX., sect. 3, 519—527.

cannot contest debt under creditors' deed for which he has permitted creditor to sign, 522.

inquiries by author of trust, he is bound to answer, 448.

purchase of trust property by, when upheld, 488.

time when he should begin to act, 514.

unclaimed dividends, trustees not entitled to, 525.

validity of, 509 *et seq.*

voluntary, how far revocable, 518.

will, by, how to be exercised, 460.

for payment of debts out of personalty nugatory, 509.

*secus* out of realty, 509.

purchaser under, when bound to see to application of purchase money, 456 *et seq.*

trustee, of, has no priority over others, 524.

# DEBTORS' ACTS (32 & 33 Vict., c. 62; 41 & 42 Vict. c. 54), 900 note (b).

defaulting trustee when liable to imprisonment under, 916 *et seq.*

# DECLARATION OF TRUST.

avowment of trust at common law, 51; must not contradict or be repugnant to instrument, 51.

charity in favour of, 54, 533.

chattels, of, 53,

common law, at, 51, 52.

conveyance to trustees, in case of, how to be made, 505, 506.

copyholds, of, 53,

deed when requisite for, 52.

formalities requisite to, under Statute of Frauds, 55 *et seq.*

Frauds, Statute of, 53 *et seq.*

interests within the Act, 53, 54, 55.

what formalities required, 55, 56, 57.

husband, gift by, to wife whether effectual as, 68; *semble* not, 69.

ineffectual transfer not held to operate as, 74.

lands, of, 53 *et seq.* See FRAUDS, STATUTE OF.

lunatic or idiot, by, jurisdiction in equity to set aside, 26.

married woman, of realty of, in her favour, 780.



[The paging refers to the [\*] pages.]

# DECLARATION OF TRUST—continued

- mortgage money, of, 54.
- parol, when sufficient, 51, 53.
  - subsequent parol declaration does not affect, 54.
- devisee made trustee on face of will, and parol declaration of trust for stranger, 64, 65.
- perfect, when, 67, 68.
- reference, by, how to be framed, 506, 507.
- testamentary instrument when requisite for, 58, 60.
- transmutation of possession not necessary where trust perfectly created, 67.
- unattested will inoperative as, 58.
- Wills, Statutes of, effect of, Chap. v., sect. 3, 57—66.
- writing when requisite for, 55 *et seq.*

# DECREE.

- account, for, does not operate as judgment, 804 note (a).
- conveyance, for, under Trustee Acts, effect of, 1026.
- costs, trustee should ask for, before decree passed, 988.
- exchange, for, makes legal owner a trustee within Trustee Act, 1026.
- judgment has same effect as 804.
- lien, creates, upon real estate, 830 note (f); but see 810, 811.
- partition, for, makes legal owner a trustee within the Trustee Act, 1026.
- payment into Court before, when ordered, 977, 978; after, when, 979.
- sale, for, makes legal owner a trustee within Trustee Act, 1025.
- Court may make vesting order after, 1026.
- specific performance, for, makes legal owner a trustee within Trustee Act, 1026.
- trustees, powers of, suspended by, 617.
  - secus*, if action brought but no decree, 617, 618.
  - but decree does not release trustee from his duties, 618.

# DE DONIS, STATUTE OF,

- estate *pur autre vie* not within, 694.
- estate tail created by, 693.

# DEED.

- acceptance of trust, whether it should be by, 205, 206.
- chattel interest in lands (other than copyhold), assignments of, void unless by deed, 693.
- construction of, in, earlier words held to prevail, *secus* in will, 212.
- custody of, may be committed to one trustee, 680, 681.
- delivery of, 38, 75.
- disclaimer of trust or estate, when requisite for, 197, 198, 199.
  - of married woman's interest in land must be by deed acknowledged, 199.
- equitable interests usually assigned by, 693.
- impeachment of, on petition under Trustee Relief Act, 1001, 1002.
- infant, by, 38.
- lunatic, by, when void, 26.
- parties to, where good as between, though void as against others, 512.
- title, of, 679. See TITLE DEED.
- use, to prove, when required, 52.
- will contrasted with, 58; and see 85, 194.
  - instances of deed in form, testamentary in character, 58 note (b).

# DEFAULTING TRUSTEE. See BREACH OF TRUST.

- costs of, 991, 992.
- when liable to attachment, 916 *et seq.*

# DEFENCE.

- equitable, recognized in all Courts, 678.

# DEFENDANT. See COSTS.

- where legal process lost through default of, equity aids, 888.

[The paging refers to the [\*] pages.]

# DEFINITION.

- settlement, of, under Settled Land Act, 550 note (a).
- tenant for life, of, under Settled Land Act, 553, 622.
- trust, of, 13.
- use, of, 2.

# DELAY. See LACHES..

# DELEGATION.

- appointment of attorney or proxy, distinguished from, 258.
- conveyance of trust estate does not transfer powers, 257.
- discretionary trust, of, actually void, 257.
- though to co-trustee or co-executor, 257.
- executors, distinguished at law and in equity as to, 256, 257.
- office of trustee, of, not permitted, 252.
- unless by settlor's direction, 253, 254, 275.
- or where moral necessity for it, *e. g.* transmission of money, 254.
- where trustee acts as agent he cannot legally retain money, 254.
- receipts, of power of signing, 471.
- trustee for sale may not delegate trust, but may employ agent, 254, 424.

# DELIVERY.

- deed, of, 38, 75.
- money, of, voluntary, whether any resulting trust upon, 145.

# DEMURRER.

- Limitations, Statutes of, right to raise, by way of demurrer, 869.
- pleading in lieu of, under new practice, 869.

# DENIAL.

- false, executor or trustee making, fixed with costs, 993.

# DEPOSIT.

- lien, by way of, is not subject to Bankruptcy Act, 244.
- sale by auction, on, duties of trustees as to, 448.
- title deeds, of, effect of, 246. See MORTGAGE, equitable.
- trust money, of, with bankers of trustees, 295 *et seq.*
- trustees for purchasing may make, 501.

# DERIVATIVE EQUITIES.

- trustees not liable for, without notice, 344, 345.

# DESCENT. See HEIR.

- assets by, 10, 825.
- broken by devise upon trust to convey to heir, 824.
- equitable estate descends as legal estate, 823.
- though there be *lex loci*, 823.
- so in copyholds, gavelkind lands, &c., 824.
- possessio fratris*, 723, 824.
- executory trust of gavelkind lands under, 825.
- half blood may now inherit, 824.
- proceeds of sale of gavelkind lands descend to common law heirs, 821.

# "DESIRE."

- may raise a trust, 130, 641.

# DEVASTAVIT, 251, 356, 357, 479. See EXECUTOR.

# DEVISE. See WILL.

- consideration, a devise implies, 130.
- debts, for payment of, 509.
- equitable interest passes by, 720, 833.
- in copyholds, 721, 722.
- estate contracted to be sold, legal estate in, when passing under, 233.
- general devise, effect of, 226 ; as to trust estates, 226 ; as to estates contracted to be sold, 227.

[The paging refers to the [\*] pages.]

# DEVISE—continued.

- implied by word "trustee," 215.
- land of, includes money directed to be laid out on land, 941.
- legal estate, when passing under devise to trustees, 218, 219. See LEGAL ESTATE.
- mortmain, devise upon secret trust in, whether void at law, 63, 66.
- resulting trust for heir, when arising, 143, 149. See RESULTING TRUST.
- "securities for money," mortgage in fee passes under, 228.
- several, to, good as to one, void as to another, 63.
- to alien and British subject upon trust, 40.
- trust, of, 720, 833; in freeholds, 720; in copyholds, 721; in customary freeholds, 721, 722.
- trust estate, when passing under, 226 *et seq.*
  - not when charge of debts or direction to sell, 227.
  - or complicated limitations, 227.
  - or gift to woman for separate use, 228.
- trustee, to, when to be construed to pass fee simple, 220.
- trustee, whether he ought to devise trust estate, 229 *et seq.*
  - where gift is to him and his "assigns," 231 *et seq.*
- unlawful trust upon, not void merely because trustee means to execute trust, 63.
- secus*, if the devise had been procured by fraud, 63.
- uses, to, when legal estate passes to trustee under, 219.

# DEVISEE.

- "assign" of trustee, whether devisee is, 231, 232.
- creditors, how far devisee a trustee for, 279.
- debtor, of, liable to specialty creditor, 206; now to simple contract debts, 206.
- declaration of trust, parol or unattested, not binding on, 59.
- except in case of fraud, 61.
- fraud by, constructive trusteeship created by, 61.
- incumbrance, effect of purchase of, by devisee, 279, 280.
- receipt of, purchaser when discharged by, 465, 469, 470.
- renewing lease, where the devise subject to debts, holds for benefit of all parties, 181.
- retainer of debt by, 830 and note (d).
- secret trust, devisee must discover, 63, 64. And see UNLAWFUL TRUST.
- trust, upon, where no trust declared, holds for heir or residuary devisee, 65.
- trustee, of, is bound by trust, 246.
- where sale to trustee set aside, is entitled to money, 494.
- whether competent to execute trust, 230 *et seq.*, 257.
- unlawful trust, secret engagement by devisee to execute, 63.
- vesting order as to estate of, when made, 1015. See TRUSTEE ACTS.

# DEVOLUTION. See DESCENT.

- equitable estate, of, 723, 823 *et seq.* See EQUITABLE ESTATE.
- legal estate, of, in trustee, 221 *et seq.* See LEGAL ESTATE.

# DIRECT TRUST. Chap. VIII. sect. 1, 108—130. See EXPRESS TRUST.

# DIRECTION.

- maintenance, as to, whether trust implied by, 137.
- trustee required to do act at direction of *c. q. t.*, 614

# DIRECTOR.

- accepting fully paid-up shares from promotor, liability of, 903, 904.
- borrowing money in excess of powers, position of, 595.
- breach of trust committed by company, director not personally liable for, 191.
- notice to, of assignment of shares, 709.
- paying dividends out of capital cannot plead Statute of Limitations, 901.
- profit, cannot make, by his office, 279.

[The paging refers to the [\*] pages.]

## DIRECTORY.

clause in will for settlement of chattels, 122 *et seq.* See **EXECUTORY TRUST.**  
powers, 600, 601.

## DISABILITY.

persons under, when barred by Statutes of Limitation, 867 *et seq.*  
trustee, of, statutes remedial of. See **TRUSTEE ACTS.**  
to purchase trust estate, 484 *et seq.* See **PURCHASE.**

## DISAGREEMENT.

co-trustees, between, Court exercises power in case of, 835.  
a ground for appointment of a receiver, 983.

## DISCHARGE.

bankrupt of trust debt how far barred by, 915, 916.  
executor, of, from office, 673.  
receiver, of, 984.  
trustee, of, from office, Chap. XXV., 645—673.  
by application to Court, 670 *et seq.*  
by appointment of new trustees by Court, 1032.  
by consent of *c. q. t.*, 645.  
by virtue of special or statutory power, 646 *et seq.* See **NEW TRUSTEES.**

## DISCLAIMER, 196 *et seq.*

acts may be shown by, 198.  
agent to trust, trustee disclaiming may act as, 198.  
answer in Chancery, by, 198.  
chattels, of, 199.  
conveyance, disclaimer should not be by way of, 197.  
copyholds, of, as affecting lord of manor, 237.  
costs of disclaiming trustee, 198, 988, 989.  
counsel, trustee may take opinion of, as to disclaimer, 198.  
creditors' deed, by trustee of, 510.  
deed, by, when requisite, 197, 198.  
delay, disclaimer should be made without, 197.  
but need not be within any particular time, 197.  
disclaiming trustee may act as agent to trust, 198.  
may purchase trust property, 485.  
appointment of new trustee in place of, 656.  
effect of, 200.  
equity, in, by answer or at bar, 198.  
by evidence of conduct, 198.  
failure of trustee by reason of, relief of *c. q. t.* in case of 833.  
form of, 197, 198.  
heir of trustee, by, when effectual, 196.  
heir taking by disclaimer of trustee, is trustee within Trustee Acts, 1016.  
legal estate, what disclaimer will divest, 198.  
disclaimer of, distinguished from disclaimer of office, 198, 200, 204.  
married woman, by, 199.  
new trustee, appointment of, in place of disclaiming trustee, 656.  
parol, effect of disclaimer by, as to chattel interest, 199.  
freeholds, as to, when effectual, 199.  
personal contracts, effect of disclaimer by trustee as to, 200.  
pleading, by, 198.  
power, of, 607.  
exercise of, how effected by disclaimer of trustee, 200, 471, 606, 607, 835.  
presumption of, from lapse of time, 202.  
protector of settlement, by, under Fines and Recoveries Act, 200.  
purchase of trust property by disclaiming trustee permitted, 485.  
receipt need not be signed by trustee who has disclaimed, 471.

[The paging refers to the [\*] pages.]

### DISCLAIMER—*continued.*

- receiver not appointed in consequence of disclaimer of one of several trustees, 983, 984.
- record, by matter of, formerly deemed necessary, 199.
- refusal to act, whether equivalent to, 647, 650, 656.
- release with intention of disclaiming whether equivalent to, 197, 608.
- renunciation of probate, disclaimer does not operate as, 223.
- to what extent evidence of, 197, 202.
- retrospective operation of, 200.
- several trusts, whether trustee under, can disclaim one and accept another, 204.
- time within which disclaimer should be made, 197.
- trust not defeated by disclaimer of trustee, 833.
- Uses, under Statute of, 199.
- voluntary trust, disclaimer of trustee does not avoid, 70.

### DISCOVERY.

- cestui que trust may require information as to state of trust, 448, 691, 704.
- fraud, of, time runs from, 868, 875, 878.
- secret trust, of, when enforced, 63, 64.

### DISCRETION.

- conversion of property, as to, Court will not interfere with trustee's, 296.
- creditors' deed, of trustees of, 523.
- investment, as to, duty of trustees to exercise, 317, 318, 322, 326.
- payment into Court by trustee having, when ordered, 981.
- power, discretionary, exercise of, by trustees, 573, 613 *et seq.* See POWER.
- by Court in lieu of trustees, 836 *et seq.*
- reasons for exercise of, trustee not bound to assign, 615.
- but if he assign erroneous reasons Court will interfere, *ib.*
- reluctance of Court to interfere with discretion of trustees, 296, 523, 624, 981.
- varying securities, as to, how to be exercised by trustees, 318.

### DISCRETIONARY TRUST.

- delegation of, by trustee, void, 257; even to co-trustee, *ib.*
- examples of, 19.
- execution of, by trustee, Court will not interfere as to mode of, 615.
- infant cannot exercise, 37.
- maintenance, trust for, discretion of trustees not interfered with by Court, 614, 615.
- whether determined on bankruptcy of *c. q. t.*, 99 *et seq.*
- married woman may exercise, 33; formerly with, now without, concurrence of husband, *ib.*
- meaning of term explained, 18.
- purchaser from trustee cannot question exercise of, 426.
- renewal of lease, for, how construed, 365.
- trustees appointed by the Court, whether they may exercise, 471, 472.
- trustees exercising, may inquire as to wishes and opinions of those interested, 257.
- words importing mere discretion, not held to create trust, 135.

### DISENTAIL, 381, 382, 694. See FINES AND RECOVERIES ACT; TENANT IN TAIL.

- payment out of Court, disentailing deed when necessary before, 960, 961.
- vesting order, by, as to land of infant, 1010, 1016.

### DISPOSING POWER.

- what is not included in term, as to judgments, 804, 805.

### DISSEISIN.

- cestui que trust, by, vests legal estate in trustee, 882.
- equitable, 723 *et seq.*

[The paging refers to the [\*] pages.]

**DISSEISIN**—*continued*.

may be of a trust, 724, 725.

outstanding term attending inheritance gained by, 250 note (1).

**DISSEISOR**.

equitable owner could not sue, in own name, 15.

not bound by trust, 15, 250.

not bound by a use, 3.

**DISSENTERS**. See **CHAPEL**.

Court will execute trust for, if not contrary to law, 533.

how trusts of fund contributed by, are expounded, 533.

**DISTRESS**.

*cestui que trust*, of, effect of, as regards delay or acquiescence, 496, 498, 866, 870, 926.

**DISTRIBUTION**.

direction for, whether creating trust or power, 838 *et seq.*

trust fund, of. See **Chap. XIV.**, sect. 6, 344—362.

part of trust estate, of, effect of, 357.

power of selection, under, 842.

time of, regulates vesting of portions, when, 386, 390 note, 393.

**DISTRINGAS**. **Chap. XXXII.**, sect. 1, 970—975.

charging order operates as, 807.

notice in lieu of, practice as to obtaining and serving, 973, 974.

applicable to all companies, 973.

effect of, where no trustee, 712.

origin and history of writ of, 971 *et seq.*

payment into Court "notwithstanding," 982.

**restraining order** under 5 Vict. c. 5, sect. 4, 971, 972; practice as to, 972.

applies to stock, shares in the Bank or any other company, 974.

special grounds necessary for obtaining, 974.

**writ of**, under 5 Vict. c. 5, sect. 5, 972; practice as to, 972 *et seq.*

applicable only to stock transferable at the Bank, 973.

notice in lieu of, 973 *et seq.*

effect of, and how and when discharged, 973, 974.

**DIVIDENDS**.

accumulation of, 301. See **ACCUMULATION**; **THELLUSSON ACT**.

apportionment in respect of, on change of investments, 323.

bankruptcy, in, apportionment of, between capital and income, 914, 915.

See **BANKRUPTCY**.

*cestui que trust* tenant for life of, usually receives, under power of attorney, 684.

charging order on partial interest of *c. q. t.*, does not prevent payment of, to trustees, 808.

co-trustees, payable to one of several, 225, 260.

direction to pay, to legatee does not authorize non-conversion of wasting security, 299.

payment of, to "trustees or any two of them" when ordered, 260.

receipt of, by one co-trustee, 225.

vesting right to receive, powers of Court as to, 1022, 1023. See **TRUSTEE ACTS**.

**DIVORCE**.

jurisdiction of Court to vary power to appoint new trustees, 670.

property of married woman how affected by, 346, 785, 1041.

**DOCUMENTS**. See **DEED**; **TITLE DEED**.

copies of, right of *c. q. t.*, and trustee to, 449, 670, 680. See **COPIES**.

production of by trustee, right of *c. q. t.* to, 975, 976. See **PRODUCTION**.

solicitor's lien on, 703. See **SOLICITOR**.

trustee suppressing, ordered to pay costs, 994.

[The paging refers to the [\*] pages.]

# DOMICILE.

- personal estate regulated by law of, 348.
- person domiciled abroad generally not a fit trustee, 40, 662.

# DOUBTFUL EQUITY.

- purchaser whether bound by notice of, 860.
- trustees, duty of, where equity doubtful, 350.
- should decline to act without sanction of Court, 350.
- will be allowed costs of application, 350.

# DOWER.

- account of, dowers may have, in equity on legal title, 890.
- curtesy distinguished from, 736, 737.
- declaration to bar, 737, 738, 1015.
- devise by husband, whether defeated by, 737.
- Dower Act, 737, 738, 941; does not apply to copyholds, 733, 738; but does to gavelkind lands, 738.
- equitable estates, out of, formerly not allowed, 11, 733, 737.
- equitable fee subject to executory devise, dower attaches to, 738.
- legal estate, dower attaches to, in feoffee to uses, 3.
- in trustee, 221.
- Limitations, Statute of, actions for arrears when bound by, 890, 891.
- money to be laid out on land, whether formerly subject to, 939, 940; is now under Dower Act, 941.
- tenant in, bound by trust, 9, 12, 15, 16.
- but anciently not bound by use, 3.
- trust, dowress bound in equity by, 9, 12, 15, 16, 246.
- trust estate, out of, anciently allowed to widow of trustee, 8.
- but not to widow of *c. q. t.*, 11.
- trustee to uses to bar, cannot be required to join in the conveyance, 687, 688.
- gets no cost in foreclosure action, 985.
- uses to bar dower inoperative as to widow married since Dower Act, 738.
- vesting order to uses to bar, when made, 1015.

# DRAINAGE. See IMPROVEMENTS.

# DRAINAGE ACTS.

- charge under, effect of, on exercise of power of sale, 428.

# DRUNKENNESS.

- executor, of, 856.
- combined with poverty, a ground for injunction, 856; and appointment of receiver, 983.

# DUPLICATION.

- of charges, 130.

# DURATION.

- private trusts, of, limited by rule against perpetuities, 89, 97.
- secus* public trusts, 20.
- trust for sale, of, 425.

# DURESS.

- effect of, as to acquiescence, confirmation, or release, 927. See 498.

# DURHAM.

- powers of Trustee Act extended to County Palatine of, 1021.
- not in lunacy, 1021 note (c).

# DUTY OF TRUSTEE.

- acceptance of office, consequent on, 206.
- advantage, trustee must not derive, from trust, 275 *et seq.*
- breach of trust by co-trustee, in case of, 273. See CO-TRUSTEES.
- care, trustee should take same, of trust property as his own, 294.
- cestui que trust can compel performance of, 853 *et seq.*

† 26 LAW OF TRUSTS.

[The paging refers to the [\*] pages.]

# DUTY OF TRUSTEE—continued.

- charities, for, 528 *et seq.* See CHARITY.
- chattels personal, of, 287 *et seq.*
- contingent remainders, for preserving, 380 *et seq.* See CONTINGENT REMAINDER.
- control, trustee must not place trust premises out of his own, 296, 297, 337, 654.
- convey, when trustee must, at direction of *c. q. t.*, 684 *et seq.*
- custody of trust chattels, as to, 294 *et seq.*
- debts, for payment of, 519 *et seq.* See DEBT.
- decree, not released by, 618.
- distribution of trust fund, as to, 344 *et seq.*
- expenses, to keep account of, 638.
- impartial, should be, as between *c. q. t.*, 423, 850.
- information, to furnish, to *c. q. t.*, 448, 691, 704; to Court as to trust, 993.
- insurance, as to, 295, 580, 598. See INSURANCE.
- investment, as to, 306 *et seq.* See INVESTMENT.
- in bank, must be paid into trust account, 295.
- lend to co-trustee, must not, 316, 325.
- nor leave money in co-trustee's hands, 273.
- mix, trustee must not, trust premises with his own, 297, 298; or stranger's 331, 642.
- moral rights against *c. q. t.*, 285.
- mortgage, lending on, 324.
- how much he should advance, 325.
- notice, trustee of equitable interest should give, to holder of legal estate, 287.
- outstanding property, and *choses en action*, to call in, 287.
- protector, duty of bare trustee, who is, 382.
- renewal of leaseholds, as to, 363 *et seq.* See RENEWABLE LEASEHOLDS.
- repairs, 504, 574, 575, *et seq.*
- retiring trustee, of, 653, 654, 655, 662.
- sale, for, 422 *et seq.* See SALE.
- settlement, impeachable, trustee must assume validity of, 286.
- speculate, trustee must not, with trust property, 276.
- summons by trustee for advice or direction of Court, 618 *et seq.*
- trade, trustee must not employ trust money in, 276, 277, 479.
- trustee may be compelled to perform duties, 853 *et seq.*

# EARMARK.

- meaning of term as applied to money, 240, 892, 893; to negotiable securities, 241, 892.

# EAST INDIA COMPANY.

- securities of, 309.

# EAST INDIA STOCK.

- Government Stock, is not, 322, 323.
- investment in, by trustee, when proper, 308 *et seq.*
- meaning of term, 309.
- railway stock guaranteed by Indian Government, 308, 316.

# EAST INDIES.

- conversion of assets in, 335.
- whether executors in, may charge commission, 628, 629.

# ECCLESIASTICAL COURTS.

- have no jurisdiction over trusts, 17.

# EDUCATION.

- trust for poor construed to include education, 538.



[The paging refers to the [\*] pages.]

**EJECTMENT.** See **ACTION.**

cestui que trust could not bring, unless surrender presumed, 678.  
equitable defence in action of, not formerly available, 678; *secus* now, *ib.*  
schoolmaster, of, from school house, 537.  
trustee may maintain action for, 678, 679.  
formerly might even against *c. q. t.*, 678.

**ELDEST SON.**

portion, when disentitled to, 388, 389, 393.  
younger child, when regarded as, entitled to portion, 386, 388, 392.

**ELECTION.**

cestui que trust, by, as to having re-sale or re-conveyance of trust property purchased by trustee, 492.

charitable objects, of, not set aside on ground of mistake, 535.

clerk or incumbent, of, under trust of advowson for parishioners, 86, *et seq.*, 257.

decree for conveyance under doctrine of, effect, under Trustee Act, 1026, 1027.

doctrine of, applies to cases of satisfaction but not of ademption, 408.

heir bound to elect is trustee within Trustee Acts, 1012.

married woman, by, 750; who is restrained from anticipation, 786.

members of parliament, of, who may vote in, 235, 681, 682.

minister of chapel, of, 534.

portionist when put to, 408.

property, as to taking, in converted or unconverted state, 953 *et seq.*

acts amounting to, 961. See *infra*, presumption.

contingent interest, by person entitled to, 957.

express declaration, by, 961.

infant not competent to make, 954.

knowledge of *c. q. t.*, what necessary to, 962.

lunatic not competent to make, 954.

married woman, by, 750, 954 *et seq.*

act in *pais*, she cannot elect by, 954; but might by fine, 954.

deed acknowledged, by, under Fines and Recoveries Act, 955.

fund in Court, as to, 750, 954.

money to be laid out in land bound by consent of, in equity, 954.

reversionary interest in money to arise from sale of land, as to, 955.

or in legacy raisable out of land, 955.

separate property, in respect of, 956.

parol, by, may be, as between real and personal representatives, 962.

presumption of, 961, 962.

(1) where land directed to be converted into money, 961.

by keeping land unsold, 961.

lease, where *c. q. t.* grants, reserving rent to himself and his heirs, 961.

possession, by entering into, and taking custody of title deeds, 961.

(2) where money directed to be converted into land, 961.

by changing securities, 961.

receiving money, 961; but not by mere receipt of income, 961.

will of *c. q. t.*, by, 962.

remainderman, by, when effectual, 956, 957.

subject to right of prior owner to call for conversion, 956.

where remainderman contingently entitled, 957.

tenant in common, by, 957.

land directed to be sold, he cannot singly elect to take, as money, 957.

money to be laid out in land, *secus*, 957

[The paging refers to the [\*] pages.]

# ELECTION—*continued.*

- portionists where put to election, 408.
- tenant in tail, by, 957 *et seq.*
- act in *pais*, by, 958, 960.
- action or suit, by, as to money to be laid out in land, 957.
- only where remainder limited to himself, 957, 958.
- or with consent of remainderman, 957, 958.
- disentailing deed, by, under Fines and Recoveries Act, 959, 960.
- payment out to tenant in tail under Lands Clauses Act, disentailing deed required on, 960, 961.
- petition, by, under 39 & 40 Geo. 3, c. 56, 959.
- property, as to taking, under or against instrument, 408, 786.
- until made, special trust proceeds, 690.

# ELEGIT.

- equitable interest bound by, 797; formerly held otherwise, 10, 797.
- what portion of trust estate might formerly be taken in execution, 799, 800.
- equity of redemption, entirety of, might be taken in execution under, 800.
- estate by, in trust for married woman, 747.
- goods not to be delivered under, since Bankruptcy Act, 1883, 795.
- moiety of lands only might formerly be taken in execution under, 799.
- but now entirety under 1 & 2 Vict. c. 110, sect. 11, 803.
- origin of, 795.
- receiver, whether a necessary preliminary to appointment of, by way of equitable execution, 814.
- remedy of, at law, by possession, 799 note (*f*).
- as to trust estate under Statute of Frauds, 802, 803.
- under 1 & 2 Vict. c. 110, 803 *et seq.*
- tenant by, not bound by a use, 3; but is by a trust, 12, 246.
- trust in nature of mortgage, against owner subject to, 801.

EMPLOY money, direction to, may authorize investment in trade, 319.

ENDOWED SCHOOLS ACT, 1869 (32 & 33 Vict. c. 56), 536, 537.

# ENFRANCHISEMENT.

- copyholds, of, power of trustee to make, 596.
- purchaser not entitled to proof of title to make, 439.
- lunatic's copyholds, of, 966, 967.
- renewable leaseholds, of, by trustee, 366, 370.
- Settled Land Acts, under powers of, 555.

# ENTAIL.

- chattels cannot be the subject of, 94, 95.
- copyholds, custom to entail, 47.
- equitable interest, power to entail, depends on custom as to legal estate, 47.
- disentailing deed, enrolment of, 694.
- equitable, how barred, 694.
- history of, 693.
- lands abroad, of, 49, 50.
- married woman, of, how barred, 748, 780, 784.
- "proper entail on heir male," direction in will for, how construed, 118.
- protector of settlement, functions of, 121, 381, 382. See PROTECTOR OF SETTLEMENT.
- quasi* of estate *pur autre vie*, properties of, 694, 695.

ENTIRETIES, husband and wife take by, 741; and see 753.

"EQUALITY IS EQUITY," 524, 837.

EQUITABLE ASSETS, 825 *et seq.* See ASSETS.

[The paging refers to the [\*] pages.]

# **EQUITABLE ASSIGNMENT.**

letter of advice that special credit opened as against goods, 83.  
order and disposition clause, takes property out of, 702 note (c).  
when complete, 708.

# **EQUITABLE DEFENCE, 17, 678.**

# **EQUITABLE ESTATE OR INTEREST. See CESTUI QUE TRUST.**

account of rents and profits, right of equitable owner to, 888, 889.  
adverse possession available against, 725.

assets, whether it was, prior to Statute of Frauds, 827.

subsequently to statute, whether legal or equitable assets, 828, 829.

**assignment of, 73, 692 *et seq.***

assignable quality of equitable interest, 692 *et seq.*

assignee of, bound by equities, 695 *et seq.*

how effected, 693.

notice of, 701 *et seq.*

not necessary as against settlor or between assignor and assignee,  
74, 246 note (f), 701.

or subsequent volunteers or persons claiming general equity, 702.

but material as against trustee in bankruptcy, 702, 703; or purchaser for value, 74, 246 note (f), 702.

precautions to be observed in case of, 704.

priority of time, 713 *et seq.*

**copyholds, in, follows rules as to legal estate, 47.**

how devisable, 721, 722.

not subject to free bench, 733.

**Courts, all, now recognise, 17.**

**curtesy of, 11, 733 *et seq.* See CURTESY.**

**descent of, 723, 823 *et seq.* See DESCENT.**

devise, passes by, 720; under old law devisable by parol, 720.

distinctions between, and legal, 45, 46.

**dower of, 11, 733 *et seq.* See DOWER.**

**entail of, may be effected, 47, 693.**

how barred, 694.

**escheat of, 822.**

**execution against, 795 *et seq.* See JUDGMENT.**

**extent from Crown, is affected by, 817.**

**fee simple may be created without word "heirs," 108.**

**foreign property, in, 48.**

**intermediate, disregarded, unless trust special, 688.**

**judgment against, how carried into effect, 795 *et seq.* See JUDGMENT.**

**lashes. doctrine of, applicable as between rival claimants to, 725.**

**land in, writing necessary for conveyance of, 693; *semble*, deed not necessary, 693.**

**legal estate contrasted with, 47, 84 *et seq.***

**limitation of, technical terms how far necessary, 109.**

**Limitations, Statutes of, application of, 865 *et seq.*, 874, 876.**

**married woman, of, rights of husband in respect to, 739 *et seq.* See MARRIED WOMAN.**

**mortgage of, 330, 331. See MORTGAGE.**

obtained by fraud, 696.

**notice, how far necessary for transfer of, 74, 246 note (f), 701 *et seq.* See *supra*, **assignment.****

**possibility, though only amounting to, is assignable, 692.**

**powers over, 598.**

distinguished from legal, 598.

simply collateral or annexed to estate, 598, 599.

**priority of owners of, 713, 862.**

**purchaser when bound by, 858 *et seq.* See PURCHASER.**

[The paging refers to the [\*] pages.]

# **EQUITABLE ESTATE OR INTEREST—continued.**

- restraint of alienation of, void except where *c. q. t. feme covert*, 693.
- resulting to grantor, settlor, or testator, 143 *et seq.* See **RESULTING TRUST**.
- sale by order of Court, bound by, 1010.
- Shelley's case, rule in, application of, to equitable limitations, 109 *et seq.*
- technical rules affecting legal estate, not applicable to, 84, 85 108.
- effect of techical terms if employed, 109.
- transfer of, notice should be given of, 701, *et seq.*
- trust of, when perfectly created, 72.
- trustee of, when entitled to conveyance of legal estate, 688.
- waste, arising from commission of, 187 *et seq.*
- will, is devisable by, 720.

# **EQUITABLE EXECUTION.**

- receiver, by appointment of, 813 *et seq.*

# **EQUITABLE MORTGAGE. See MORTGAGE.**

- trustee should not lend on, 331.

# **EQUITABLE WASTE. 188, 190. See WASTE.**

# **EQUITY.**

- assignee of equitable interest takes subject to every. 695 *et seq.*
- better equity, meaning of, explained, 714 *et seq.*
- Courts of, alone have jurisdiction over trusts, 16.
- can act *in personam*, 48.
- corporations amenable to, 30.
- trustee cannot come into, for own benefit, 284.
- doubtful, 350.
- duty of trustee in case of. 350.
- purchaser whether bound by, 860.
- equal, meaning of expression, 713, 714.
- "equality is equity," 524, 837.
- intermediate, usually disregarded, 688; when not, *ib.*
- order for sale hinds equities, 1010.
- personal, 49 note (c).
- priority in, 713 *et seq.*
- rules of, to prevail where there is conflict between law and equity, 574.
- secret, owner of, may by conduct be precluded from setting up, 716.
- settlement, to, 740 *et seq.* See **MARRIED WOMAN**.

# **EQUITY OF REDEMPTION. See MORTGAGE.**

- assets, is, 827 *et seq.*
- barred by lapse of time, when, 866.
- chattels, of, may be taken under equitable *fi. fo.*, 796.
- copyholds, of, where formerly liable as assets, 809 note (1).
- Crown debt, may be sold for payment of, 818.
- curtesy, whether subject to, 723.
- distinguished from a trust, 248.
- dower, not subject to, 11, 733, 737.
- escheat, did not, 823.
- lord taking by escheat, 249.
- forfeitable for treason, 820.
- Frauds, Statute of sect. 10, cannot be delivered in execution under, 802.
- judgment creditor entitled to sale of entirety of, 800, 801.
- Limitations, Statutes of, when beginning to run against remainderman, 866.
- mortgage of, trustee should not advance money on. 330.
- purchase of, by mortgagee, 277, 490 727. See **MORTGAGEE**.
- purchase of, by trustee, improper, 503, 504.
- release of, by trustee, when proper, 593.
- sale of, trustee for, may sell subject to mortgage, 427.

[The paging refers to the [\*] pages.]

- ESCHEAT, CHAP. XXXVI.** sect. 10, 822, 823.  
 copyholds not properly subject to, 248 ; nor customary freeholds, 248.  
 lord bound by trust entered on roll, 248.  
 equitable estate, of, 11, 282, 822, 823.  
 equity of redemption, lord taking by escheat bound by, 240.  
 formerly did not escheat, 823 ; *secus* now under Intestates' Estates Act, 1884, *ib.*  
 felony, on, 27.  
 now abolished, 28, 1036.  
 legal estate in trustee formerly subject to, *secus* now, 221, 240, 241.  
 lord claiming by, whether bound by trust, 11, 12, 16, 247 *et seq.*  
 not bound by use, 3.  
 money to be laid out on land not subject to, 940.  
 mortgagee or trustee, estate vested in, does not, 250, 1036.  
 real estate escheating is assets in hands of lord, 240.  
 trust in fee of lands formerly not subject to, 11 ; but trustee retained the estate, 282.  
*secus* now under Intestates' Estates Act, 1884, 823.  
 vesting order, jurisdiction to make, as to estate escheated to Crown, 1031.
- ESCROW.**  
 conveyance on sale when operating as, 75.  
 voluntary settlement retained by settlor does not take effect as, 75.
- ESTATE FOR LIFE.** See **TENANT FOR LIFE.**
- ESTATE OF TRUSTEE.** See **LEGAL ESTATE.**
- ESTATE PUR AUTRE VIE,** 165. See **PUR AUTRE VIE.**
- ESTATE TAIL.** See **ENTAIL ; TENANT IN TAIL.**
- ESTOPPEL.**  
 acquiescence, or concurrence in breach of trust, by, 918 *et seq.* See **ACQUIESCENCE.**  
 Court of Equity rejects, 265.  
 recital, by, as affecting trustee, 201.
- EVIDENCE.** See **AFFIDAVIT ; FRAUDS, STATUTE OF ; PAROL ; TRUSTEE ACTS.**
- EXCEPTION.**  
 devise, from, distinguished from charge, 154.  
 distinction how far applicable to legacies to charities, 155.  
 residue, out of, next of kin benefited by, 160.
- EXCHANGE.**  
 charity lands, of, with consent of Charity Commissioners. 540.  
 decree for, makes legal owner a trustee within Trustee Act, 1026.  
 power of sale and exchange a "usual" power, 127 *et seq.*  
 whether it authorizes partition, 427.  
 or signing receipts, 460.  
 Settled Land Acts, under powers of, 555, 557.
- EXCHEQUER BILLS.**  
 Government securities are not, 321.  
 investment in, by trustees, 308, 320, 321.
- EXCHEQUER, COURT OF.**  
 transfer of equitable jurisdiction of, to Court of Chancery, 30 note (g).  
 whether it could relieve *c. q. t.* as against royal trustee.
- EXECUTED TRUST.**  
 construction of, 111.  
 meaning of term, 111.
- EXECUTION.**  
 bankruptcy of debtor, creditor how affected by, 815, 816.  
*cestui que trust*, for debt of, 224, 795.

[The paging refers to the [\*] pages.]

# EXECUTION—*continued*.

- chattels, of, by *fi. fa.*, 794, 795. See JUDGMENT.
- from what time chattel interests in land bound, 795.
- trust chattels, 224.
- completion of, 815, 816.
- creditor taking trust chattel in, bound by trust, 224, 245, 247.
- whether he can by execution levy debt upon property subject to voluntary trust for debts, 518.
- equitable, 795 *et seq.*; against separate property of married woman, 771.
- by appointment of receiver, &c., 813 *et seq.*
- executor, for debt of, against assets, 225.
- trustee, for debt of, 224, 245. See JUDGMENT.
- writs of, at common law, 794.

# EXECUTOR.

- acceptance of office of, 201, 202.
- executor having once acted cannot renounce, 202, 251.
- but may renounce probate and claim legacy, 197.
- having acted, deemed to have accepted trusteeship of real estate, 204.
- having proved, cannot refuse to act in trusts, 203.
- executor of executor administering to one testator must to other, 202.
- accounts, costs of taking, when allowed to, 994.
- is bound to keep, 975, 976.
- acting as, acceptance of office by, 202, 203.
- administration action, effect of, on powers and duties of executor, 449, 597, 598.
- advertisement by, for creditors under 22 & 23 Vict. c. 35, 362.
- agent, employment of, by executor, when justifiable, 253.
- executor acting as; not liable as executor, 264.
- executor not required to take security from, 256.
- allowance to, for time and trouble, 628, 629, 631, 632.
- appropriation of legacy by, effect of, 204.
- of securities to residuary legatee, 592.
- assent of, to bequest, 205, 477, 884.
- assets, 825 *et seq.* See ASSETS.
- cannot be taken in execution for executor's debt (unless under special circumstances), 225.
- conversion of, by executor within what time to be made, 288, 289.
- duty of executor as to calling in, 273, 278, 288, 335, 581.
- legal and equitable, what are, 825 *et seq.*
- mortgage, executor may allow assets to remain on, 291.
- but not on personal security, 290.
- where legal proceedings would be useless he is not liable, 291.
- mortgage of, by executor, 477, 478.
- not forfeitable for felony, 225.
- personal in hands of executor a species of trust property at common law, 224.
- sale of, by executor, 477, 478.
- vest in executor's executor, 202, 224; but not in executor's administrator, 225.
- voluntary interference with, is acceptance of office, 202, 251.
- attorney, effect of signing power of, to get in testator's estate, 202, 203, 272.
- banker of, bound to act according to his directions, 482, 483.
- bankrupt, goods in possession of, when devolving on trustee in bankruptcy, 244.
- beneficial interest, where entitled to, 60.
- beneficially interested, assignee of, bound by equities, 696, 697.
- business, carrying on testator's, rights and liabilities of executor, 238, 479, 581.

[The paging refers to the [\*] pages.]

# **EXECUTOR—continued.**

- cestui que trust, of, when entitled to call for conveyance, 688.
- charge of debts on real estate, effect of, on powers of executor, 461 *et seq.*, 466, 467.
- charge, may not make, for time or trouble, 628.
  - whether entitled to commission for administration in East Indies, 628, 628.
- chattels, power of executor to deal with, 477, 478, 479.
- co-executor—**
  - assets, putting, into hands of co-executor, is liable, 271, 296, 297.
  - banker, payment of money to co-executor who is, 253.
  - bankruptcy of, liability of co-executor for costs, 634, 635.
  - comparison of, with co-administrator and co-trustee, 268.
  - debt owing from co-executor, his duty as to calling in, 273, 291.
  - delegation of duty by, to executor, 253; to stranger, 254.
  - devastavit of co-executor, liability for, 251, 257.
  - discretionary trust cannot be delegated to, 257.
  - indorsing bill of exchange payable to himself and another, 272.
  - leaving money in hands of, co-executor liable for, 273, 296, 297.
  - liability of, for acts of co-executor, 257, 267.
    - executor not generally answerable for acts or defaults of co-executor, 268.
  - necessary or nugatory acts, joining in, not usually liable, 255, 269, 272.
  - power of, to act without co-executor, 268.
  - receipts, joining in *pro forma*, not liable, 268.
  - representation of co-executor, he ought not to depend on, 272.
    - especially where testator long dead, 272.
  - survivorship of office of, 261.
- commission, when allowed to charge, 628, 629.
- compounding debts and claims, power of executor as to, 591.
- constructive trustee, when deemed to be, 1012
- contract of sale or purchase by testator, effect of, 943.
- conversion of assets, time within which he ought to effect, 288, 289.
- costs allowed to, in creditors' action, 986. See *Costs*.
- in action by strangers, executors unsuccessfully contesting claim pay costs, 993.
- covenants, what may be required from executors of one who has agreed to grant lease, 442.
  - by executors of lessee on assignment, 442, 445.
- creditors of testator, how protected against, 362.
  - may be answerable to, though not to legatees, 271.
  - rights of, as against executor, 477.
- Crown, right of executors to residue as against, 61.
- debt of, assets when capable of being taken in execution for, 225.
  - retainer of, 590.
  - sale or pledge by executor to secure, 479, 480, 481.
- debtor to estate, assignment of beneficial interest by, 696.
- debts.**
  - after payment of, must account for surplus, or is chargeable with interest, 338.
  - barred by Statute, executor may pay, 590; but not after decree, 590.
  - composition of power of executor to effect, 591.
  - contracted by executor in that character cannot be proved for as debts of the testator, 238.
  - duty of executor to call in outstanding, 273, 278, 288, 290.
  - duty of executor to discharge, 338, 509.
- decree, power of dealing with assets after, 449, 617.
- delegation of office by, 252 *et seq.* And see *supra*, **co-executor**.

[The paging refers to the [\*] pages.]

# EXECUTOR—*continued.*

- derivative executor, duties and liabilities of, 202.
- deson tort*, renewing lease in own name is constructively a trustee, 180.
- devastavit by, 251, 479, 591; claim for, when barred, 356, 357.
  - executrix married woman, by, 769.
- discharged, cannot be, from office, even by Court, 673.
  - but may be, from trusteeship, 673.
- discretion of, how to be exercised, 257.
- donee of general power, of, entitled to transfer of trust funds, 688.
  - secus* in case of special power, 688.
- drunken or dissolute, restrained from administering, 856.
- East Indies, in, may charge commission, 628, 629.
- equitable assets in hands of, what are, 828.
- equitable mortgage by, 477.
- executor of executor administering to one testator must to other, 502.
  - when competent to exercise power, 603.
- foreign law, is not presumed to know, 347.
- fraudulent sale or pledge by, 478.
  - who may impeach, 483.
- heir not favoured more than, 947.
- heir of vendor a trustee for executor, 1016.
- housekeeping expenses of testator, executor when justified in continuing, 288.
- indemnity, what, he may require, as to leaseholds, 185, 238, 445.
- India, conversion of assets in, 335.
  - executor in, may charge commission, 628, 629.
- injunction against, when granted, 856.
- interest, when chargeable with, 343, 344.
  - not charged during first year from testator's death, 343.
- intestate, executor dying, assets vest in administrator *de bonis non* of testator, 225.
- land to be converted into money when devolving on, 949.
- lease, has not in general power to grant, 425.
- lease, renewing, cannot hold for own benefit, 180, 182.
- lease to, how to be framed, 442 note (i).
- lease to testator, liability of executor under, 445, 446.
- leaseholds, may hold title deeds of, till all debts paid, 680.
- legacy, appropriation of, by executor, 204, 581.
  - executor renouncing may claim, unless attached to office, 197.
  - time for payment of, 581.
  - to executor for trouble, 629.
- legal assets in hands of, what are, 828.
- legatees may be answerable to creditors, though not to executor, 356.
  - office of executor cannot be interfered with by, 477.
- liability of, rule of law as to, 256. See *supra*, assets, co-executor, debts, devastavit.
- Limitations, Statute of, not bound to set up defence of, 590.
- live stock of testator, executor should sell forthwith, 288.
- lunatic, vesting order as to property of, power of Court to make, 1015.
- married woman, executrix, powers, &c., of, 224, 225, 769.
  - husband of, is trustee within Trustee Acts, 1021.
- married woman, of, under will in execution of power, 775.
- merger of charge, how affected by, 729.
- mesne* rents, account of, against executor, 886.
- money to be laid out in land, when entitled to, 944.
- mortgage of assets by, 477 *et seq.*
  - may allow assets to remain on, 291.
  - where mortgagee has notice of impropriety, 479, 480.



[The paging refers to the [\*] pages.]

**EXECUTOR—continued.**

- mortgagee, of, may call on heir to convey, 943.
- or obtain vesting order, 1019.
- mortgagor, of, formerly bound to discharge debt out of personalty, 943
- next of kin, is trustee for, of undisposed of residue, 61.
- where no next of kin executor takes beneficially as against Crown, 61.
- unless clearly mere trustee, 61.
- overpayment by, effect of, 356, 357.
- option of purchase, cannot grant lease with, 425.
- outstanding, should not allow assets to remain, 273, 278, 288, 290.
- should not allow debts which carry interest to remain, 338.
- partner of testator, accountability of, in respect of assets left in business, 278.
- personal security, should not allow assets to remain on, 290.
- pledge of assets by, 477 *et seq.*; to secure private debt, 479, 480, 481.
- poverty of, does not prevent his administering, 856.
- power when exercisable by executor of donee, 603, 604, 609.
- to "executors" or to "A and his executors," by whom exercisable, 603, 604.
- private debt, sale or pledge by executor to secure, 479, 480.
- where he is joint specific or joint residuary legatee, or subject to a charge, 480.
- where he is sole specific or residuary legatee, 479.
- where creditor has notice of unpaid debts of testator, 480, 481.
- probate, can sell and give receipts before, 483.
- effect of taking out, 201.
- executor when constituted trustee by proving will, 203, 204.
- prerogative, whether term in trustee requires a, 224.
- renunciation of, 197, 201, 202, 223.
- profits, executor making, by assets, must account, 340.
- promise of subscription by testator, executor whether bound to carry out, 590.
- proof by, in bankruptcy of trustee, 912.
- purchase of assets by, improper, 490; *secus* where he never proves will, *ib.*
- real estate, when empowered to sell, 461, 466, 467, 468.
- receipts, liability of executor joining in, 256, 268, 269, 272.
- powers of executor to give, 447 *et seq.*, 597.
- receiver appointed where husband of executrix out of jurisdiction, 983.
- or where executor a person of bad character, &c., 983.
- refund, legatee when bound to, monies wrongly paid to him, 356.
- refusal by, to transfer stock, 1020, 1042.
- release, entitled to, on final settlement of accounts, 358.
- effect of release by pecuniary legatee, 359.
- renewal of lease by, in own name, 180 *et seq.*
- rents and profits, account of, against executor of pernor, 886.
- renunciation of probate by, effect of, 197, 201, 202, 223, 607.
- equivalent to disclaimer of power, when, 607.
- executor having accepted office cannot renounce, 202, 251.
- retractation of, 223.
- residuary legatee, powers of executor who is, 479, 480.
- rights of, as against executor, 477.
- settlement by executor with one of several, 357, 592.
- when bound to refund overpayments, 356, 357, 592.
- residue, appropriation of securities forming part of, 592.
- residue, right of executor to, prior to 11 Geo. 4 & 1 Will. 4, c. 40, 60.
- parol evidence when admissible against title of executor, *ib.*
- retainer by, of his own debt, though statute barred, 590.
- right of, not interfered with or enlarged by 32 & 33 Vict. c. 46, 831.
- but ceases where estate is administered in bankruptcy, 832.

[The paging refers to the [\*] pages.]

# EXECUTOR—*continued*.

- salary to, may be given by testator, 631.
- sale of assets by, 477 *et seq.*
  - nominal price or fraudulent undervalue, at, 473.
  - private debt or advantage to secure, 479, 480.
- set-off by, against creditor of testator, 699.
  - against legatee, 696, 699.
- sole, power when exercisable by, 604.
- specific legatee, powers of executor who is, 479, 480.
- specifically bequeathed property, sale of, by executor when valid, 477, 478.
  - where purchaser has notice of impropriety, 479.
- stock how transferred by, 32.
- stock standing in name of, vesting order as to, 1023.
- subscription promised by testator, whether executor should pay, 590.
- surplus after payment of debts, is accountable for, or chargeable with interest, 338.
  - and no excuse that he did not use the money, 339
- survivorship of office of, 261.
- tenant at will, of, procuring lease to himself, 182.
- time allowed to, for conversion of assets, 288, 289.
  - breaking up testator's establishment, 288, 581.
- lapse of, powers of executor how affected by, 481.
- legacies, for payment of, 581.
- title deeds of leaseholds, right of executor to, 680.
- trading with assets, liability of, 276 *et seq.*, 339 *et seq.*, 479, 581.
- trust estates vested in testator now devolve on, 222, 233, 1018.
- trustee, is *prima facie*, for next of kin, 285; but not for Crown where no next of kin, 285.
  - to perform duties of executor, appointment of, 912.
  - Trustee Acts, executor is trustee within, 1012.
  - when executor converts himself into trustee, 204, 205, 481, 673, 884.
- trustee, of, bound by trust, 246, 906.
  - declining to appoint new trustees, not liable for costs, 649.
  - powers vested in heirs or assigns of trustee exercisable by, 233.
  - right of, to decline to act in trust, 672, 673.
  - specific bequest of trust property, whether executor with specific legatee can execute trust, 231.
  - trust estate now devolves on, although otherwise devised or bequeathed, 222, 226.
  - when competent to execute trust, 230, 233.
  - whether he can sign receipts, 483, 484.
- trustee, who is, powers and duties of, 476, 525.
- Trustee Relief Act, payment of money into Court under, 998, 1003.
- vendor, of, empowered to convey, 1011.
- windfall, when entitled to, 966.
- year allowed to, for conversion of assets, &c., 289, 290, 343, 581.
  - but legacy may be paid before expiration of, 581,

# EXECUTORY DEVISE.

- contingent remainder converted into, by 7 & 8 Vict. c. 76, 383; but that Act repealed, *ib.*
- takes effect as, where practicable, under 40 & 41 Vict. c. 33, 383, 384.

# EXECUTORY TRUST, 111 *et seq.*

- alien, for, Crown cannot take advantage of, 45.
- anticipation, in restraint of, 782.
- Borough English lands, as to, 824.
- construction of, in marriage articles, 112 *et seq.*
  - chattels, agreement to settle, on same terms as real estate, 115.

[The paging refers to the [\*] pages.]

# EXECUTORY TRUST—*continued.*

- “heirs of body,” construed limitation to eldest son as heir, and if no son to daughters as co-heiresses, 115.
- notwithstanding death of son or daughter in parents lifetime, unless contrary implication, 115.
- hotchpot clause supplied, 117.
- joint tenancy, words conferring, when construed as tenancy in common, 117.
- real estate, “heirs of body” or “issue” applied to, construed first and other sons in tail as purchasers, 113.
- exceptions where husband’s property limited to heirs of body of wife, 114; *quære*, however, since Fines and Recoveries Act, sects. 16, 17, *ib.* or where articles negative construction, *e. g.* by limitation of part of estateto parent for life, remainder to first and other sons in tail, 114.
- “heirs female” construed “daughters,” 114.
- words supplied in articles, 117.
- construction of, in post-nuptial settlements, 126.
- construction of, in wills, 117 *et seq.*
  - chattels, as to, 122 *et seq.*
    - semble*, that chattels bequeathed as heirlooms vest absolutely in first tenant in tail though he die an infant, 123.
    - limitation over on tenant in tail dying under twenty-one, when to be inserted, 123.
    - peerage, direction that heirlooms should go with, 124, 125.
  - real estate, as to, 117 *et. seq.*
    - “heirs of the body,” when construed to give estate tail to ancestor, 118.
    - “A. for life and the heirs male of his body and their heirs male successively,” 118.
    - “proper entail on heir male,” 118.
    - “heirs of the body,” construed, “first and other sons in tail,” where intention to that effect shown, 119.
    - contingent remainders, effect of limitation to preserve, 119.
    - direction for “strict entail,” 120; or strict settlement, 508.
    - direction that entail should not be barred, 119, 121.
    - direction to settle as “counsel shall advise,” 119.
    - life estate for separate use, 119, 782, 824, 825.
    - “without impeachment of waste,” where life estate is to be, 119, 120, 507, 508.
    - where testator directs settlement, but formerly declares limitations, 122.
    - words indicating that ancestor was not meant to have a power of disposition, 119 *et seq.*
- contingent remainders, limitations to trustees to preserve, whether inserted, 121.
- curtesy admitted of, where money to be laid out in land, 734.
- daughters included in “heirs of body,” or “issue,” 115, 120.
- duplication of charges, referential trust ought not to be construed so as to effect, 130.
- executed and executory trusts distinguished, 111.
- gavelkind lands, as to, 121, 122, 824, 825.
- “heirs of the body,” how construed, 113, 115, 118.
- distinguished from issue, 120.
- intention of settlor, carried out in conformity with, 112.
- marriage articles, in, distinguished from the like in will, 112, 113. See *supra*, construction.
- married woman, direction in will for strict settlement on, 126.

[The paging refers to the [\*] pages.]

# EXECUTORY TRUST—*continued*.

- meaning of term, explained, 111, 112.
- notice of, 860.
- powers, what may be inserted in settlement under executory trust, 126 *et seq.*
  - “proper,” 128.
  - “usual,” 127, 128.
- protector, special, whether Court will appoint, under Fines and Recoveries Act, 121.
- strict settlement, meaning of term, 508.
- waste, tenant for life not usually made dispunishable for, 120, 507.
- will, in, distinguished from the like in marriage articles, 112, 113. See *supra* **construction**.

# EXECUTRIX.

- appointment of executor by, may be without husband's consent, 224.
- husband of, powers of, to deal with assets, 225.
- trustee held to be, within Trustee Acts, 1021

# EXONERATION.

- judgment or charge, of property from, as between purchasers, 718, 719.
- personal estate, of, from costs, 644.
- share of proceeds of land, of, from mortgage by legatee, 951.

# EXPECTANCY.

- voluntary assignment of, whether it creates a trust, 74.

# EXPEDIENT.

- when Court deems it expedient to appoint new trustees, 1027 *et seq.*

# EXPENSES. Chap. xxiv., sect. 2, 634—644.

- account of, trustee should keep, 638
  - where none kept, what allowance made, 638.
- allowance for, to trustees, 634 ; even where express allowance for trouble, 637.
  - or where trustee wrongfully appointed, 634.
- cestui que trust when personally liable to trustee for, 642, 643.
- costs of specific performance action against trustees, when allowed as, 432.
- counsel, fees to, when allowed to trustee, 198, 636.
- deed, of, direction to pay, is implied, 641.
- donee under voluntary settlement incurring expense not a volunteer, 75.
- exoneration of personalty from, 644.
- extra costs, trustee when allowed, 636, 638.
- finances for renewal of leases, lien of trustee for, 184.
- funds out of which expenses payable, 643, 644.
  - real and personal estate, as between, 642.
- lien for, trustee when entitled to, 184, 639.
  - not where guilty of breach of duty, 640.
  - nor against moneys for public services in hands of Secretaries of State, 642.
  - trustee's agents, *e. g.* solicitors or surveyors not entitled to, 641 ; unless expressly so directed, *ib.*
  - remedy for enforcement of, 640, 642.
    - where trust extends to several estates, 642.
- lying by, while expense incurred, effect of, 716, 717.
- moderated, charges may be, and how, 638.
- necessary, what are, 987.
- opposition to Bill in Parliament, costs of, when allowed to trustees, 636.
- reimbursement of, how made, 634 *et seq.*
  - out of what fund, 643, 644.
- release to trustees, of, 359.
- renewal of lease, of, lien for, 184. See **RENEWABLE LEASEHOLDS**.
- sale, of, to be borne by purchaser, 440.

[The paging refers to the [\*] pages.]

## EXPENSES—*continued*.

Settled Land Act, under, allowed to trustee, 636.  
 "testamentary," includes costs of administration action, 644.  
 trust to pay costs, &c., construction of, 644.  
 void deed, under, 640.

## EXPRESS TRUST, Chap. VIII., sect. 1, 108—130.

account of rents and profits from what time granted, 886.  
 executed and executory, distinguished, 111.  
 legacy after executor's assent is held on express trust, 884.  
 Limitations, Statutes of, express trusts in general excluded from operation of, 875 *et seq.*, 901.  
 Real Property Limitation Act, 1874, when subject to, 876 *et seq.*  
     mere charge is not, *secus* charge coupled with duty, 878, 879.  
 mortgage by way of trust for sale not an express trust within statutes, 880.  
 resulting trust when an express trust within Statutes of Limitations, 877.  
 technical terms not necessary for limitation of equitable estate, 108.  
     but if employed are taken in legal and technical sense, 109.

## EXTENT (FROM CROWN) Chap. XXVII., sect. 8, 817, 818.

equitable interest affected by, 817.  
 equity of redemption may be sold under, 818.  
 lands could not be sold under, at common law, 817; but may by statute, 818.

## EXTINGUISHMENT.

power, of, 605, 606, 609, 610, See POWER.  
 trust for sale, of, 425.

## EXTRAORDINARY OUTLAY.

trustee, by, whether he can charge for, 638.

## FACTOR. See AGENT.

Bankruptcy Act, operation of, as to goods in his possession, 240, 244.  
 followed, money may be, into hands of, 894.  
 profiting by his fiduciary position is a constructive trustee, 187.  
 selling for money payable at future day, 241.  
 special property only vests in, 241.  
 trustee who is, cannot profit by trust, 280.

## FAILURE.

bank, of, trustee when liable for, 297.  
 cestui que trust, of, of personalty by death intestate without next of kin, 285.  
     of realty by attainder, 284.  
         by death, intestate without heirs, 282.  
 devise by, on trusts which fail, devisee entitled as against bare trustee, 284.  
 settlor, right of, to trust property, 284.  
 trustee, right of, to trust property, 282.  
 heirs, of, devolution of property in case of, 282. See ESCHEAT.  
 next of kin, of, of *c. q. t.* dying intestate, 285.  
 trustee, of, *c. q. t.* protected against, 833 *et seq.*  
     death, by, 833.  
     direction to sell, and no person to sell named, 834.  
         for separate use and no trustee appointed, 834.  
 disclaimer, by, 833. See DISCLAIMER.  
 imperative power, 834 *et seq.* See POWER.

## FALSE.

answer, by corporation (pleading ignorance) visited with costs, 994.  
 denial by agent of his character, 163.  
     by trustee of claim of *c. q. t.* visited with costs, 993.

[The paging refers to the [\*] pages.]

# FAMILY.

meaning of word, 133; in a will means children *primâ facie*, 133 note (c).  
trust for, of freeholds, how construed, 133.

# FARM LEASE. See LEASE.

# FATHER. See ADVANCEMENT; PARENT.

# FEE SIMPLE.

charge of debts, legal fee simple when passing by virtue of, 218.  
conditional, 47.

limitation in tail, where no custom to entail, construed as, 47.  
devise to trustee, when to be construed to pass fee simple, 220.

equitable, word "heirs" not necessary to create, 109.

fee upon a fee, rule preventing, not applicable to trusts, 84.

grant or devise to two and the survivor and the heirs of the survivor, effect of, 214.

legal, vested in trustee by trust to sell, &c., without "heirs," 213.

*secus* where gift to A upon trust to pay debts out of rents, 214.

trust to lease confers fee simple, 217.

what estate taken under grant to trustees and survivor and heirs of survivor, 214.

under devise, 215.

where legal estate in first instance given to trustees and discretionary powers superadded, 218, 219.

# FELON, how far he may deal with chattels, 27. See CONVICT.

# FELONY.

attainder upon, abolished, 28.

cestui que trust, of, 283.

equitable chattels, forfeiture of, 820.

forfeiture or escheat upon, 28, 818 *et seq.* See FORFEITURE.  
abolished, 28, 821.

outlawry upon, effect of, 28, 250.

prosecution for, necessity for, before taking civil proceedings, 898.

trustee, of, power of Court to appoint new trustee, 1043, 1044.

# FEME COVERT. See MARRIED WOMAN.

# FEME SOLE.

trustee, whether she may be appointed, 36, 37.

# FENCING.

expense of, falls on corpus, 683.

# FEOFFMENT.

infant, by, 25, 26.

lunatic or idiot, by, 26.

tenant for life, by, formerly worked forfeiture, 821.

use on, when it might be declared by parol, 52.

results to feoffee if without consideration, 163.

# FIERI FACIAS. See EXECUTION; JUDGMENT.

execution by, at common law, 794.

in equity, 795, 796.

# FINE.

effect of, in cases of election, 954, 955.

infant, by, 25.

lunatic or idiot, by, 26.

non-claim, with, a bar against constructive trust in favour of a volunteer without notice, 866.

no bar in case of notice, 858.

# FINES.

copyholds, for admission to, 235 *et seq.* See COPYHOLD.

[The paging refers to the [\*] pages.]

# **FINES—continued.**

- payment of, not a condition precedent to admission, 235.
- treated as income of the lord, 682.
- lease of charity lands, upon, 543.
- leases, on, under Settled Land Acts, 561.
- onerous, how they may be avoided when the estate devolves on several trustees, 237.
- renewal of lease, on, how to be raised, 366 *et seq.* See RENEWABLE LEASEHOLDS.
- annual, treated as income of tenant for life, 682.
- under-leases, on, 371.

# **FINES AND RECOVERIES ACT.**

- acknowledgement by married woman under, 22.
- concurrence of husband when dispensed with, 35.
- effect of conveyance in such case, 35 note (*m*).
- legacy charged on land, on conveyance of, 955.
- reversionary interest in land directed to be converted, on conveyance of, 955.
- contingent remainders, trusts to preserve, how effected by Act, 381, 382.
- contract, power of *feme covert* to, under Act, 645.
- election under powers of, by *feme covert*, 955; by tenant in tail, 959, 960.
- settlement where husband's property limited to heirs of body of wife, 114.
- entail, married woman may bar, 780; or enlarge into fee simple, 784.
- equitable estate tail, how barred under, 694.
- protector of settlement under, 121, 381, 382, 682. See PROTECTOR OF SETTLEMENT.
- irresponsibility of, 121.
- whether Court will appoint, in carrying out executory trust, 121.
- vesting order need not refer to, 1013.

# **FIRM. See PARTNERS.**

- breach of trust of one partner, how far liable for, 902, 913, 916.
- set-off against, right of, how affected by change of firm, 698, 670.
- trustee lending money to, becoming bankrupt, 916.

# **FIXTURES.**

- trust property, on, trustee cannot buy up, for himself, 276.

# **FOLLOWING TRUST PROPERTY.**

- parol evidence admissible for purpose of, 169.
- right of *c. q. t.* to follow trust property wrongfully converted, Chap. xxx.
- sect. 2, 892—897. See BREACH OF TRUST.
- trustee in bankruptcy, into hands of, 240, 912.

# **FORECLOSURE. See MORTGAGE.**

# **FOREIGN LAW.**

- whether trustee or executor presumed to know, 347, 348.

# **FOREIGN PROPERTY.**

- bonds of foreign Government not within Trustee Relief Act, 998.
- boundaries of estates abroad, specific performance of articles for ascertaining, 48.
- entail of lands abroad, 49.
- fraudulent conveyance of, relieved against, 49.
- injunction against taking possession of lands, 49.
- mortgage of lands abroad, foreclosure of, 49.
- movable, follows the person, 48.
- real estate, Court will enforce natural equities and contracts provided parties are within jurisdiction, 48.
- quære whether so as to trusts, 49, 50.

[The paging refers to the [\*] pages.]

# FOREIGN PROPERTY—*continued*.

- not where foreign law would make decree of Court nugatory, 49.
- sale of land abroad ordered, 49.
- Scotch estate, equitable mortgage of, enforced, 48.
- trusts of, how far effectual, 48, 49, 50.
- as regards personal estate, 48.
- as regards real estate, 49.

# FOREIGN SECURITIES.

- conversion of property invested in, 300.
- meaning of term, 321.
- Trustee Relief Act, are not within, 998.

# FOREIGNER.

- will, foreigner may dispose of English property by, 27.
- in case of personalty formalities according to law of domicile, 27
- note (*b*).

# FORFEITURE.

- alienation or bankruptcy, on**, 102 *et seq.*, 556, 680.
- contingent remainder not destructible by forfeiture of previous estate, 121, 383.
- felony, outlawry, or treason, in case of:**
  - abolition of, by recent statute except for outlawry, 28, 821.
  - chattels and goods, of, took place upon conviction, 28, 820.
  - felon may sell goods, &c., before conviction, 28
  - but not collusively to defeat rights of Crown, 28.
  - how far he may make a settlement, 28.
  - equitable interests, of, none at common law in trusts of lands, 818
  - quare, under 33 Hen. 8, c. 20, s. 2, 818 *et seq.*
  - equities of redemption within the Act, *semble*, 820.
  - alien, trust for, 95, 823 note (*b*), how Crown prosecuted its rights, 96.
  - chattels, in, 820.
  - wife of felon, trust for, 821.
- executor, assets in hand of, exempted from, 226.
- husband, of, effect of, on wife's equitable term, 820.
- land, of, took place upon attainder, 27, 818.
- secus* if felon contingently entitled, 821.
- land directed to be converted, proceeds of, when forfeitable, 950.
- money to be laid out on land not forfeitable as personalty, 821, 950.
- outlawry, on, 28.
- trustee or mortgagee, of property vested in, 247, 821, 1036.
- chattels subject to, at common law, 222; *secus* now, 222.
- secus* as to assets in hands of executor, 225.
- freeholds subject to, at common law, 221; *secus* now, 221.
- trustee beneficially interested, 1036.
- trust estate, person taking, under forfeiture bound by same equity as forfeitor, 247.
- feoffment by tenant for life under old law, by, 821.
- not where tenant for life only equitably entitled, *ib*.
- order and disposition clause in bankruptcy, under, 242 *et seq.*

# FORGERY.

- letter of attorney, of, by broker, 353.
- mortgage, trustee lending on forged, liable where negligent, 353.
- trustee absconding on charge of, removable, 847.

# FORISFAMILIATION.

- effect of, on trust for maintenance, 139.



[The paging refers to the [\*] pages.]

## FORMALITIES.

- trust, for creation of, what formalities requisite, Chap. v. 51—66.
  - common law, at, 51, 52.
  - Statute of Frauds, under, 53 *et seq.*
  - Statute of Wills, under, 57 *et seq.*
  - valuable consideration, where trust grounded on, formalities, of minor importance, 67.
- will of foreigner disposing of English property, 27.
- will, for execution of, 57 *et seq.*

## FRAUD.

- account in cases of, carried back to accruer of title, 888, 891.
  - mesne* rents, of, in equity though upon legal title, *ib.*
- agent, or attorney, by, gives rise to constructive trust, 191, 192.
- allowance for repairs and improvements not made to person guilty of, 492.
- appointment, fraudulent, trustee suspecting, whether compellable to con-  
vey, 686.
- trustee, of, 668.
- assignee of equitable interest affected by fraud of assignor, 696.
- bankruptcy, discharge in, does not release fraudulent trustee, 992.
- benefit from, party to fraudulent contract cannot derive, 862.
- concealed, whilst fraud is, time does not run against defrauded person,  
868, 875, 878.
- confirmation obtained by means of, 497.
- conveyance, fraudulent, as against creditors, 77 *et seq.*, 510, 518.
  - absolute as against grantor, 145.
  - act of bankruptcy by making, 512, 514, 518.
  - delay not a bar to action to set aside, 873 note (e).
- of estate abroad relieved against, 49.
- for creating votes, 105.
- costs in cases of, 991.
- co-trustee, of, trustee not liable for, 253.
- creditors, settlement in fraud of, when invalid, 77 *et seq.*, 510, 518.
- delay in bringing action for relief against, effect of, 868, 875, 878.
- devisee, by, promising to provide, for child of testator, 61.
  - when trust is raised by, 65.
  - only where devisee takes beneficial interest, 65.
- discovery of, time begins to run from, 868, 875, 878.
- discretion of trustee, fraudulent exercise of, controlled by Court, 616.
- executor, fraudulent dealing with, 478 *et seq.*
- expenditure, by allowing another to incur, 717.
- heir, by, in procuring estate to descend on false representation, 61.
- infant not protected from consequences of, 39, 355, 919.
- joint tenant, by, effect of, 63; devise procured by, wholly void, 63.
- laches, effect of, where plaintiff alleges fraud, 864, 872.
- land abroad, fraudulent conveyance of, relieved against, 49.
- lapse of time, effect of, in cases of fraud, 864, 868, 872.
- legacy obtained by, intention of testator must be executed, 61.
- Limitations, Statutes of, when they begin to run in cases of, 868, 875, 878.
- married woman, by, 739, 784, 919, 920; protected against, 759, 784, 919.
- mistake of another man, by encouraging, 717.
- money obtained by, right to follow, 897.
- parol, may be established by, 63; and see 167.
- partner, by, 902, 916.
- pleadings, where charged in, defence whether, by demurrer or plea, 869.
- possession, fraudulent, is adverse, 864.
- power, on, 616, 686.
  - when Court will interfere in cases of, 616.
- powers of executor vitiated by, 478.

[The paging refers to the [\*] pages.]

**FRAUD**—*continued*.

- preference, fraudulent, in creditors' deed, by secret agreement, 513, 523.
- making good trust money is not, 897.
- secret equity, by person entitled designedly concealing, 716.
- tenant in common, by, devise procured by, may be good as to co-tenant, 63.
- trust void on ground of, recovery of trust property where, 106.
- by fraudulent settlor, *ib.*; by person claiming through him, *ib.*
- trustee not liable for fraud of co-trustee, 253.
- criminal proceedings against fraudulent trustee, 898.
- discharge in bankruptcy does not release fraudulent trustee, 916.
- trusteeship created by, 61, 62, 63, 65, 862, 864.
- trusts originated by 1.
- vitiates any transaction, 478, 509.
- voluntary settlement procured by, 75.

**FRAUDS, STATUTE OF**, Chap. v. sect. 2, 53—57.

- affidavit, trust may be evidenced by, 56.
- answer in chancery, when sufficient declaration of trust, 55, 56.
- antenuptial agreement as to wife's realty signed by husband not sufficient, 57.
- assets by descent under sect. 10, what are, 827 *et seq.*
- assignments of trust, writing necessary for, 55, 693.
- bill in chancery, whether declaration of trust might be by, 56 note (a).
- charitable trusts are within, 54.
- chattels real are within, 53.
- but not chattels personal, 53.
- colonial lands, whether within, 55.
- copyhold, declaration of trust of, is within, 53.
- but not surrender to uses, 53 note (c), 721.
- Crown whether bound by, 54.
- defence of, must be specially pleaded, 55.
- devises of land, as to, 57.
- elegit* under sect. 10, 802, 803.
- formalities required by, for creation of trust, 55 *et seq.*
- fraud, not pleadable in aid of, 54.
- implication of law, trusts arising by, are not within, 167. 193 *et seq.*
- indemnity, verbal promise of, not within the statute, 349.
- interests within the Act, what are, 53 *et seq.*, 693.
- letters, &c., to constitute sufficient declaration of trust must relate to subject matter and nature of trust must be clear, 56.
- parol evidence of surrounding circumstances admissible, 56.
- memorandum, when sufficient evidence under, 55.
- money secured on mortgage is not within, 54.
- "party by law enabled to declare trust," who is, 57.
- pleaded, must be, under present practice, 55.
- recital in bond, trust may be evidenced by, 55.
- signature, what, necessary to satisfy, 56, 57.
- unsigned paper, reference to, 57.
- subsequent acknowledgment in writing, when sufficient for creation of trust, 55.
- trust estate how far assets under sect. 10 of Act, 827 *et seq.*
- when to be taken in execution at law under same section, 802, 803.
- trust of lands, formalities required for declaration of, 55 *et seq.* See *infra*, writing.
- wills, provisions of statute relating to, 57, 720.
- repealed but principles established by cases under, still applicable, 66.
- writing, trusts to be proved by, not declared in, 55.
- what, is sufficient, 55, 56, 57.
- relation to subject matter of trust and nature of trust must be clear, 56.
- money may be followed into land by parol, 896.

[The paging refers to the [" ] pages.]

**FRAUDULENT CONVEYANCE**, &c., 77 *et seq.*, 510, 514, 518.

**FRAUDULENT PREFERENCE**, 897. See **BANKRUPTCY**.

**FRAUDULENT TRUSTEES' PUNISHMENT ACT**, 898.

**FREEBENCH**.

equitable estate in copyholds, does not attach to, 733.

legal estate in trustee, attaches to, 221.

**FREE GRAMMAR SCHOOL** (see 3 & 4 Vict. c. 77), 536.

**FREEHOLD**.

disclaimer of, how to be made, 197, *et seq.* See **DISCLAIMER**.

estate for life may be devised to trustee notwithstanding 1 Vict. c. 26, 220.

legal estate in, when passing under devise to trustees, 211, 212, 216.

where freeholds and copyholds descend together, 217.

**FRIENDLY SOCIETY**.

loan by trustees of, on improper security, 333.

**FUND**.

in Court, assignment of, 711, 712. See **STOP ORDER**.

meaning of term "funds," 322.

trust fund, assignment of, 702 *et seq.* See **NOTICE**.

**FUNERAL EXPENSES**.

priority of, in administration of assets in bankruptcy, 832.

wife, of, out of separate estate, 773.

**GAME ACT** (22 & 23 Car. 2, c. 25).

qualification under, extended to *c. q. t.* of lands, 681.

**GAMEKEEPER**.

must not be appointed for pleasure of trustees, 275.

**GARNISHEE**.

trust debts vested in, not affected by attachment, 225.

trust money, garnishee order not made absolute as to, 245.

but money may be ordered into Court pending inquiry, 245.

**GAVELKIND LANDS**.

descent of money arising from sale of, 824.

of equitable interest in, 824.

Dower Act extends to, 738.

feoffment by infant under custom of Kent, 25, 26.

settlement of, under executory trust in articles, how made, 121, 122.

**GENERAL ORDERS**. See **RULES OF COURT**.

distringas, as to, 973.

interest on simple contract debts, as to giving, from decree, 526 note (d).

investment, as to, of cash under control of Court, 308, 309.

stop order, as to proceedings for obtaining, 712.

**GENERAL WORDS**.

trust estate, not construed to pass, 225.

**GIFT**.

chattels, delivery of, whether a gift or creating a resulting trust, 145.

equitable interest, of, 73.

husband, by, to wife whether effectual as declaration of trust, 68; *semble* not, 69.

effectual as gift since Married Women's Property Act 1882, 69.

exception as against creditors, *ib.*

imperfect, Court will not give effect to, as trust, 74.

power, words of, distinguished from words of gift, 838 *et seq.*

stock, transfer of, whether gift or resulting trust, 145.

stranger, to, person *sui juris* may freely make, 71.

"trust" and "trustee," use of terms, does not necessarily exclude a beneficial gift, 148.

trustee cannot accept, from *c. q. t.*, 277.

[The paging refers to the [\*] pages.]

# GOVERNMENT ANNUITIES ACT, 1882, 32.

## GOVERNMENT SECURITY.

- Bank of England stock is not, 307.
- Exchequer bills are not, 321.
- investment on, when proper, 307, 314, 502. See INVESTMENT.
- meaning of term, 322.

## GRAMMAR SCHOOL.

- trust for, how carried into effect, 536.

## GRANDCHILD.

- advancement for, presumed, 177.

## GRANDFATHER.

- whether regarded as being in *loco parentis*, 391 note (a), 395, 402.

## GRANT.

- whether inserted in conveyance by trustees, 441, 687.
- word "grant" does not imply warranty, 687.
- use of, now not necessary for conveyance, 687.

## GRANTEE.

- mala fides* by, effect of, 145.

## GREEK BONDS.

- investment in, 322.

## GROUND RENTS.

- lending on security of, power of trustee as to, 325.
- whether trustees may purchase, 502, 505.

## GUARDIAN.

- administration granted to, limited to appointing new trustees, 657.
- advantage, cannot gain, by his office, 279.
- co-guardian, payment to, trustee not discharged by, 614, 615.
- infant cannot be, 37.
- office survives as to testamentary guardians, 261.
- secus* joint guardians appointed by Court, 262 note (a).
- receipt by, for legacy of infant, when a good discharge, 355.
- trustee, is, to extent of property come to his hands, 279.

## HARDSHIP.

- Court will not enforce against trustees a contract which involves, 441.

## HEIR.

- advowson, right of presentation to, when devolving on heir, 275.
- cestui que trust attainted, whether his heir may sue trustee, 284.
- cestui que use, of, right to sue subpoena descended to, 3.
- chattel interest resulting to heir devolves on his personal representatives, 143.
- chattel, limitation of, to A. and his heirs, 94.
- common law heir when entitled to proceeds of sale of gavelkind lands, 824.
- contract of sale or purchase by testator, how affected by, 943.
- conversion, cannot claim by virtue of, under will of ancestor, 953.
- creditors, how far heir a trustee for, 279.
- customary, when trust estate devolves on, 824.
- when competent to execute trust, 233.
- disclaimer by, 196, 197.
- equity of, as against executor, 729, 942 *et seq.*
- failure of, 822, 823. See ESCHEAT; TRUSTEE ACTS.
- trustee accidentally advantaged by failure of heirs of *c. q. t.* 282 *et seq.*
- favoured, whether, more than executor, 947.
- fraud by, inducing ancestor to allow estate to descend, 61.
- "heirs," use of, as word of limitation. See HEIRS; HEIRS OF THE BODY.
- incumbrance, effect of heir purchasing, 279, 280.

[The paging refers to the [\*] pages.]

**HEIR—continued.**

infant, of vendor who has contracted to sell real estate, whether a constructive trustee for purchaser, 1011.

legacy to, will not alone prevent a trust from resulting, 147.

land directed to be converted into money, heir when entitled to, 950, 953.

See CONVERSION,

Limitations, Statute of, heir when barred by, 874, 875.

as to resulting surplus rents under express trust, 877.

lunatic, of, interests of, how far regarded by Court, 963 *et seq.* See LUNATIC.

money to be laid out on land, heir when entitled to; 941 *et seq.*, 953. See CONVERSION.

merger of charge, heir benefited by, 729.

mortgagee of, entitled as against residuary legatee who neglects to assert title, 861.

executor may call for conveyance from, 943.

mortgagor, of, formerly entitled to have debt discharged out of personalty, 943.

*persona designata*, when he may claim as, 110, 953.

personal representative to be deemed "heir" within the meaning of trusts and powers, 233.

personal representatives of, chattel interest resulting to heir devolves on, 151.

power when exercisable by heir of donee, 609.

power of sale when exercisable as against, 611.

may be exercised by personal representative of last surviving trustee, 233.

severance of estate by co-trustees, how affected by, 237.

receipt of, purchaser when discharged by, 465, 466, 468, 471.

resulting trust in favour of, when it arises, 63, 65, 143, 147, 149, 154. See RESULTING TRUST.

whether resulting interest devolves as realty or personalty, 150, 151.

See CONVERSION.

retainer of debt by, 830, and note (d).

secret trust, right of heir to discovery as to, 64.

settlor, heir of, when bound by trust, 834.

specialty debts, heir how liable to, 206.

trust attaches upon conscience of, where no trustee named, 834.

trustee, of, originally not bound by a use, 2.

but afterwards held bound, 2.

bound by trust, 246; whether he can disclaim, 196.

contract for purchase of trust property not enforceable by, 487.

descent to, 723.

where sale to trustee set aside, whether entitled to purchase-money, 494, 495.

whether competent to execute trust, 230.

Trustee Acts, heir when deemed to be trustee within, 1011, 1012, 1016, 1017.

undisposed of proceeds of conversion, heir when entitled to, 149.

unlawful trust, right of heir to discovery as to, 64.

use, is bound by a, 2.

younger child, heir not regarded as, entitled to portion, 386, 392.

**HEIRLOOMS.**

bequest of, to same uses as chattels in strict settlement how construed, 122 *et seq.* See EXECUTORY TRUST.

cestui que trust, rights of, in respect to, 683, 684.

not forfeited on bankruptcy of, 683.

sale of, under Settled Land Acts, 566, 567, 684.

suspension of vesting of, how effected, 123.

tenant for life entitled to use of, 123, 683, 684.

[The paging refers to the [\*] pages.]

# "HEIRS."

- blended real and personal estate, meaning of "heirs" in disposition of, 133.
- devise to, cannot be cut down to chattel interest, 214.
- equitable estate, devise of, without word "heirs" may give the fee, 109.
- secus* a grant by deed, 109.
- grant or devise to two and survivor and heirs of survivor, 214.
- "heirs female," construction of, in marriage articles, 114.
- "heir male," construction of, in will, 118.
- trust for sale, devise upon, confers fee without word "heirs," 213

# "HEIRS OF THE BODY."

- construction of, in marriage articles as to chattels, 115.
- as to freeholds, where construed "first and other sons," 113, 860.
- in wills, where construed first and other sons, 119. And see EXECUTORY TRUST.
- daughters included under designation of, 115, 120.
- equitable entail may be created without use of the words, 108.
- husband's property, limitation of, to heirs of body of wife, 114.
- "issue," not synonymous with, 120.
- purchaser without notice whether bound by construction of the term, 860.

# HERIOT.

- when payable as to copyholds on death of trustee, 235, 236.

# HIGH COURT OF JUSTICE.

- constitution of, 17.

# HINDE PALMER'S ACT (32 & 33 Vict. c. 46), 206, 238, 525, 831.

# HOPING.

- may raise a trust, 131.

# HOTCHPOT.

- clause, supplied in carrying out executory trust in marriage articles, 117.
- money to be laid out in land held not liable to be brought into, 941.

# HOUSEHOLD GOODS.

- trust of, right of *c. q. t.* to use goods, 683, 684.

# HOUSEKEEPING.

- expenses of testator, when executors justified in continuing, 288.
- wife not bound to contribute to, from separate estate, 778.

# HOUSE PROPERTY

- loan by trustees on mortgage of, 325.
- purchase of, by trustees, when justifiable, 502.

# HUSBAND. See MARRIED WOMAN.

- administration to wife, small sums paid to husband without taking out, 354.
- breach of trust of wife, formerly liable for, 33; *secus* since Married Women's Property Act, 1882, *ib.*; unless he interferes, *ib.*
- cestui que trust, of, sometimes appointed trustee, 41.
- cestui que use, of, could not sue subpoena, 3.
- concurrence of, to execution of trust by wife, when necessary, 34, 36.
- power of Court to dispense with, 35.
- debts of wife, liability of husband for, 790, 793.
- disentailing assurance of wife's land, concurrence of husband in, 780.
- executrix, husband of, might administer assets during coverture, 34.
- secus* now under Married Women's Property Act, 1882, 36.
- gift by, to wife, 68, 755; whether valid as declaration of trust, 68; *semble* not, 69.
- now valid as gift, both at law and in equity, 69; exception as against creditors, 69.
- gift to, by wife, of separate property when presumed, 777, 778.
- gift to, when regarded as portion to wife, 405.

[The paging refers to the [\*] pages.]

# HUSBAND—continued.

- insurance by, for benefit of wife and children, 789, 792.
- title deeds of wife's lands, trustee in bankruptcy of husband whether entitled to, 680.
- tort, husband and wife cannot sue each other for, 761.
- trustee of wife's separate property, formerly construed to be, 754, 834.
  - gift to husband and another upon trust (*inter alia*) for wife not gift for her separate use, 757.
  - trustee parting with possession to husband, liability of, 902, 903.
- wife's property, how far he may dispose of, 739 *et seq.* See MARRIED WOMAN.
- chattels real, equitable, 23, 746, 747.
- choses in action, 23, 24, 739 *et seq.*
- wife's separate property, what arrears of, can be claimed from husband, 776, 777.
- pin money, 777.
- undisposed of, husband surviving is entitled to, 774, 775.

HUSBANDRY LEASE. See LEASE.

IDIOT. See LUNATIC.

IGNORANCE. See MISTAKE.

- acquiescence defeated by, 918; and so confirmation, 497, 926.
- breach of trust when excused by, 889, 904.
- lashes excused by, 496, 870, 926.
- law, ignorance of the, 497, 926.
- order and disposition clause does not apply where true owner ignorant that he is such, 244.
- plea of, by corporation trustees of a charity, where false, entails costs, 994.
- presumption of waiver, how far rebutted by, 870.
- release defeated by, 185, 186, 870.
- statutory bar not prevented by, from running in equity, 866.
- trustee, of, as to his true character, 244, 889, 904.
- trustee pleading falsely, ordered to pay costs, 994.

ILLEGAL TRUST. See UNLAWFUL TRUST.

ILLEGITIMATE CHILD.

- advancement for, presumed on purchase by father in his name, 177.
- future, trust for, invalid, 95.
  - except where child can take as *persona designata*, 95.
  - trust by will for, quære as to, 95 note (d).
- putative father of, may place himself in *loco parentis*, 402.

IMAGINARY VALUE.

- trustee not charged with, 908.

IMBECILITY. See LUNATIC.

IMMORAL TRUST, 105. See UNLAWFUL TRUST.

IMPEACHABLE SETTLEMENT.

- trustee may assume validity of, 346.

IMPERATIVE POWER, 600, 834 *et seq.* See POWER.

- direction for conversion when held imperative, 947, 948, 951.
- "shall and may," force of, in Act of Parliament, 262 note (b).

IMPERFECT TRUST, 67 *et seq.* See VOLUNTARY SETTLEMENT.

IMPERTINENCE.

- charge of misconduct on part of trustee, is not, where, 847.

IMPLICATION.

- acceptance of trust, of, 201, 203, 205, 251. See ACCEPTANCE OF TRUST.
- costs and expenses of deed, of direction to pay, 641.
- devise by, 215, 217, 218.

[The paging refers to the [\*] pages.]

# IMPLICATION—*continued*.

power by, 434, 454. See EXECUTORY TRUST.  
reconversion by, where land directed to be taken as personalty, 433, 434.  
trust by, 130 *et seq.* See IMPLIED TRUST.  
trustee by, who is, where no trustee named, 834.  
words "subject thereto" implied, 155.

# IMPLIED TRUST. See CHAP. VIII, sect. 2, 130—142.

agreement to settle property, by reason of, 140.  
charge of debt or legacy, heir or devisee taking under, is impliedly a trustee, 140. See CHARGE.  
condition, by use of words importing, 140.  
constructive trust, distinguished from, 108 note (1).  
contract for sale, how it arises under, 141, 142. See PURCHASE.  
conversion, for, is question of intention, 948.  
gift of personalty with limitations appropriate to realty, 948.  
costs and expenses, direction that devisee should be allowed, held to imply trust, 149.  
covenant or agreement to settle property, when raised by, 141.  
Frauds, Statute of, not, applicable to, 167, 193 *et seq.*  
heir, attaches to conscience of, where no trustee named, 834.  
maintenance of children, when trust implied under gift for, 137, 138. See MAINTENANCE.  
operation of law, trust by, distinguished from implied trust, 408 note (1).  
partial trust, in case of implication of, the surplus does not result, 137.  
precatory words, by use of, 130 *et seq.*  
implication of trust in such case now rather discouraged, 137.  
not a question of mere grammatical import, 133, 136.  
uncertain words, no trust created by, 82, 132.  
reconversion, for, 433, 434.  
resulting trust, where trust implied but objects unascertainable, 133. See RESULTING TRUST.  
none where trust is partial only, 137.  
trustee under, not bound so strictly as by common trust, 136.  
may be tenant for life only, 136; or mere trustee taking no beneficial interest, 137.  
uncertainty, where there is no trust is implied, 132.  
unless uncertainty arises from want of evidence as to whole intention of settlor, 132, 133.  
objects of trust, of, 133.  
subject matter of trust, of, 134.

# IMPOUNDING.

beneficial interest of *c. q. t.* to answer breach of trust, 911.

# IMPRISONMENT.

for debt abolished, 916.

exception in case of trustee ordered to pay money in his possession, 917

# IMPROVEMENT OF LAND ACT, 1864 (27 & 28 Vict. c. 110), 577. See STATUTES.

investment under provisions of, 329, 330.

# IMPROVEMENTS.

advice as to, Court will not give, under Lord St. Leonards' Act, 620.

Agricultural Holdings Act, under, 563, 564, 595, 596.

allowance for, where contract is set aside, 491.

charity lands, to tenant of, 544, 546.

ornamental improvements, not made for, 575, 576.

purchase by trustee, in case of, 493; no allowance in case of fraud, 492.

wrongful sale by trustee, 902.

charity lands, of, 538, 544, 546.



[The paging refers to the [\*] pages.]

# IMPROVEMENTS—*continued.*

- Improvement of Land Act, under, 577.
- infant, to lands or, 575, 579, 968.
- joint tenant, lien of, for improvements, 165.
- lasting, lien of trustee for, 184, 576, 577, 640; even where trust deed void, 640.  
when sanctioned by Court, 575.
- lunatic's estate, of, when allowed out of personalty, 965, 966. See LUNATIC.
- ornamental, by trustee, expense of, not allowed, 575, 576.
- purchase of land, out of money held on trust for, 575, 576.
- Settled Land Acts, under powers of, 505, 560, 561, 563, 575.
- tenant for life, by, 574, 575 *et seq.*
- right of, to have moneys for improvements raised out of corpus, 577.
- trustees when justified in applying money for, 504, 575 *et seq.*

# INABILITY.

- trustee, of, to act, 659.

# INACTIVITY.

- trustee, of, whether ground for appointing receiver, 984.

# INCAPACITY.

- trustee, of, when a ground for appointing new trustees, 658, 847.
- or for appointing receiver, 982, 983.

# INCOME.

- accumulation of, 89 *et seq.* See ACCUMULATION; THELLUSSON ACT.
- during minority of infant, 579, 582, 584, 585.
- application of, accruing before conversion, as between tenant for life and remainderman, 301 *et seq.* See CONVERSION.
- debts recovered, what proportion of, is, 914, 915.
- payment of, to two or more trustees, 259.
- what is to be regarded as corpus and what as income, 305, 682, 683, 914, 915, 1003, 1004. See APPORTIONMENT.

# INCOME TAX.

- trust for payment of, lawful, 105.
- trustee omitting to deduct, cannot afterwards do so, 349.

# INCONVENIENCE.

- relief when refused after lapse of time on ground of, 870 *et seq.*
- charitable trustees, in action against, for account, 934 *et seq.*

# INCREASE. See AUGMENTATION.

# INCUMBRANCE. See CHARGE; MORTGAGE.

- equitable, purchaser having notice of, is bound, 858.
- merger of, 726 *et seq.* See MERGER.
- purchaser should keep charges on foot, 727.
- priority of, by giving by notice, 702, 704.
- purchase of, by heir, devisee, joint tenant, or tenant for life, effect of, 279, 280.
- by mortgagor, 728.
- trustee cannot buy up for himself, 276 *et seq.*

# INDEBTEDNESS.

- settlor, of, only a *circumstance* of fraud, 78.

# INDEMNITY.

- Bank of England, to, on complying with orders under Trustee Acts, 1043.
- bond of, on appointment of new trustees, 359.
- on distribution of trust fund, 349.
- against breach of trust, 349, 668.
- business of testator, executor carrying on, is entitled to indemnity, 238.
- cestui que trust bringing action in name of trustee must give, 853.
- gaining by breach of trust must indemnify trustee *pro tanto*, 910.
- Charity Commissioners, persons acting under advice of, are indemnified, 933.
- charity funds, trustees, paying, to official trustee are indemnified, 361.

[The paging refers to the [\*] pages.]

# INDEMNITY—*continued.*

- clause of, in trust deeds or wills, effect of, 274 ; special, 274, 275.
- Court, trustee acting under sanction of, obtains, without release, 359.
- executor when entitled to, 185, 238, 445.
- instalments, future, trustee under Trustee Relief Act not indemnified as to, 996.
- leaseholds, in respect of, when trustee and executors can require, 185, 238, 445; 446.
- indemnity fund usually set apart, 445.
- promise of, not within Statute of Frauds, 349 note (g).
- remainderman, to be given by, in respect of back rents, 687.
- trust for, not void for perpetuity, 98.
- trustee when entitled to, 349, 358, 910.
- incurring legal liability at request of *c. q. t.*, 642, 643.
- where no actual loss incurred, 643.
- cannot require fund to be kept in Court under Trustee Relief Act, 999.
- out of fund appointed by *feme covert*, 919 *et seq.*
- trustee may be required to give, if suspected of intention to act unfairly, 854.

# INDIA. See EAST INDIES.

- assets in, conversion of, 335.
- executor in, may charge commission, 628, 629.
- railway stock, investment in, when proper, 308.
- stock, 308.

# INDICTMENT.

- withdrawal of, against fraudulent trustee, 898.

# INFANT.

- account when directed in favour of, 886, 888, 889, 890.
- accumulation of income of, during minority, 579, 582, 584, 585.
- acquiesce, cannot, in breach of trust, 496, 918, 923 ; *e.g.* purchase by trustee, 496.
- advancement to, what is, 171, 588 note (b). See ADVANCEMENT.
- when trustee may make, 588, 589. See ADVANCEMENT.
- assurance by, may be avoided, 38.
- attorney, cannot be, in suit, but might be to deliver seisin, 37.
- bailliff, cannot be, 37.
- breach of trust, cannot commit, 39 ; or concur in, 496, 918, 923 ; or release, 925.
- unless guilty of fraud, 39.
- protected after attaining majority until he has full information, 925.
- capacity, has no legal, 37.
- chattels, delivery of, by infant voidable only, 38.
- confirm, cannot, breach of trust, 923, 925 ; or purchase by trustee, 497.
- consent by, to change of investment, 37.
- constructive trustee, when deemed to be, within Trustee Acts, 1012.
- conversion of property of, 967 *et seq.*
- in general not permitted, 967.
- position of infant as to, distinguished from that of lunatic, 967.
- mortgage, &c., paid off out of his money, considered personality, 968.
- necessary outlay for realty when thrown on personality, 968.
- e. g.* keeping up house, option to purchase at given price, repairs, 968, 969.
- purchase money of devised estate, paid out of personality, 968.
- sale by order of Court, effect of, 151, 152.
- seisin changed from *ex parte maternâ* to *ex parte paternâ* on renewal of lease, 968.
- timber cut, proceeds of, how applicable, 967, 969.
- whether realty or personality, 967, 969, note (d).

[The paging refers to the [\*] pages.]

# INFANT—continued.

- covenant by, effect of, 39; infant *feme covert*, by, to settle property, *ib.*
- day to show cause, whether to be given to, 1026.
- debts contracted by, for necessities, 521.
- deed by, effect of, 25, 38; *quære*, whether void or voidable, *ib.*
- delivery of goods by, voidable only, 38.
- disability of, effect of, 37.
  - how remedied under Trustee Acts, 1015, 1016, 1027, 1041, 1042. See TRUSTEE ACTS.
- discretion, has not any legal, 37.
- election, is not competent to make, 954.
- estate tail of, barred by vesting order, 1016.
- executor, might formerly have acted as, 37; cannot appoint, 26.
- exoneration of estate of, 968. See *supra*, **CONVERSION**.
- feoffment by, not void, but voidable, 25, 38.
  - by custom of Kent infant may make *for value and sembl* without, 25, 26.
- fine levied by, formerly reversible only during minority, 25,
- fraud, not protected from consequences of, 39, 355, 919.
- gift to, presumption that he takes beneficially, 39.
- guardian *ad litem* to, appointment of, 1000.
- guardian of, powers of, 355, 614. See **GUARDIAN**.
- guardian to a minor, cannot be, 37.
- improvements on lands of, 575, 968.
- investments allowed to be retained where for benefit of infants, 290.
- joint tenancy, whether infants can sever, 117.
- jurisdiction, out of, vesting order as to interest of, 1021.
- land of, person entering on, is bailiff for infant, 886.
- legacy to, appropriation of, 592.
  - maintenance out of, 582 *et seq.*
  - payment of, how to be made, 355, 360.
- Limitations, Statutes of, when barred by, 868, 891.
- lord of manor, may give effect to custom, 37.
- maintenance of, 581 *et seq.* See **MAINTENANCE**.
  - discretion of trustee as to, 614.
- majority, protected by Court after attaining, 925, 993.
- management of land of, during minority, statutory powers as to, 578, 579, 580.
- married woman, cannot consent to transfer of her property to husband, 742.
  - covenant by, to settle property, 39, 766.
  - may appoint attorney, 39.
  - receipt by, for accumulations of income, 579.
  - Settled Land Acts, exercise of powers under, 569.
- ministerial acts, may perform, 37; *e. g.* as lord of manor he may give effect to custom, 37.
- mortgagee, vesting order of interest of, under Trustee Acts, 1014 *et seq.*
  - See **TRUSTEE ACTS**.
  - costs of, 1037.
- parental influence, protected against, after majority, 993.
- payment to, by trustee, how to be made, 355.
  - into Court of money belonging to, 360, 1036.
- portion, appointment of, to infant of tender years viewed with suspicion, 400.
- power of attorney by, void, 38.
- power simply collateral, may exercise, 37, 599.
  - and in gross, as to personal estate, 37, 599, 600.
  - but, *sembl*, not as to real estate, 37.
  - unless intention to the contrary apparent, 38.

[The paging refers to the [\*] pages.]

# INFANT—*continued*.

- presumption that he takes beneficially, 39.
- purchase in name of, by parent, held to be for advancement, 171.
- purchase of trust property by trustee for, 490.
- ratification by, after majority, of voidable covenant, 39, 766.
- receiver, cannot be, 37,
- recovery of, formerly reversible only during nonage, 25.
- release, not competent to give, 925.
- relinquishment of office by trustee, he cannot consent to, 645.
- rents and profits, account of, where decreed in favour of, 886, 888, 890.
- account barred unless brought within six years after majority, 886.
- carried back to accruer of title, 888.
- but where defendant ignorant of true character as trustee, only to action brought, 889.
- legal title, infant may sue in equity for account on, 886, 890.
- repairs of real estate of, expenses of, how defrayed, 968, 969.
- retainer of investment where beneficial to infant, 290.
- sale of estate of, by the Court, to whom surplus money belongs, 151.
- under Lands Clauses Act, 151.
- under Partition Act, 151, 152.
- seisin, may be attorney to deliver, 37.
- seneschal, may appoint, 37.
- Settled Land Acts, exercise of powers under, 554, 569.
- steward of manor, cannot be, 37.
- but acts by him in this capacity cannot be avoided, 37.
- stock of, power of Court to make vesting order as to, 1041, 1042.
- tenant for life, powers of, under Settled Land Acts, 554, 569, 575.
- timber cut on estate of, proceeds whether realty or personalty, 969.
- trust, how far he can create, 25.
- created by him would not be enforced to his prejudice, 25.
- requiring exercise of discretion, he cannot execute, 38.
- trustee**, infant ought not to be appointed, 37.
- costs of, under Trustee Act, 1037.
- substitution of new trustee for, 1027,
- vesting order as to interest of, 1015, 1016, 1041, 1042.
- trustee for, how he may purchase trust property, 489, 490.
- unsound mind, of, power of Court to deal with interest of, 1015, 1020.
- use upon a feoffment or recovery, an infant might declare, 25.
- ward of Court, is constituted, by order for maintenance under Trustee Relief Act, 1002.
- will of, 26, 940 note (g), 967, 969; formerly he might make will of personalty if 14 years of age, 26, 967.
- but not of money to be laid out on land, 940.

# INFLUENCE.

- undue, voluntary settlement will be set aside for, 75.

# INFORMATION.

- Attorney-General, in name of, when proper remedy, 31, 927.
- advowson vested in trustees for parishioners, not proper in case of, 86.
- charities, for breaches of trusts as to, 927.
- corporation, against, for removal of governors, not sustainable, 528, 529.
- but in case of maladministration Court interposes, 529.
- cestui que trust may require, as to state of trust, 448, 691, 704.

# INHABITANTS.

- election of clerk by, 86.
- trustees required to be, of particular locality, 848.

[The paging refers to the [\*] pages.]

## INJUNCTION.

- breach of trust, to restrain, 855 *et seq.*
- cestui que trust entitled to, whether damage reparable or not, 855.
- where co-trustee should apply for, 274.
- equitable tenants in common, between, 679.
- husband, to restrain, from entering house of wife, 778.
- improper sale, to restrain, whether *c. q. t.* may have, 435, 855.
- whether mortgagee, 435 note (d), 855 note (c), 856.
- lands abroad, to restrain taking possession of, 49.
- married woman, against, to restrain dealing with separate property, 772.
- partial owner, on application of, 855.
- payment into Court notwithstanding injunction, 982.
- solicitor, against, who has bought up mortgages, 856.
- timber, account of, not granted unless injunction prayed for, 886.
- trustee insolvent, bankrupt, or dissolute, against, 855, 856.

## INNOCENT TRUSTEE.

- costs of, guilty trustee ordered to pay, 990.

## INQUIRY.

- assignee of equitable interest should make, of trustee, 704.
- cestui que trust, by, trustee must answer, 448, 691, 704.
- Charity Commissioners, by, 931.
- incumbrancer, by, as to existence of previous charges, 705.
- loss of trust fund, as to, and as to steps to be taken for recovery, 672.
- purchaser, by, as to incumbrances, &c.; 459 note (a).
- trustee, by, when called upon to convey legal estate, 685, 686.
- trustee, to be made by, before accepting office, 207, 670, 706.
- Trustee Relief Act, under, when directed, 999 *et seq.*

## INQUISITION.

- when necessary to perfect title of Crown, 95, 819.

## INROLMENT.

- conveyance of, under Statute of Mortmain, 96, 97.
- disentailing assurance of equitable estate in copyholds, 694.

## INSOLVENCY. See BANKRUPTCY.

- cestui que trust tenant for life, goods left in possession of, not forfeited, 683.
- equity to settlement of *feme covert* as against assignees, 742.
- limitation over on, effect of, 103, 104.
- maintenance, trust for, at discretion of trustees, how far assignees take under, 99, 100.
- proof under, 412 *et seq.* See BANKRUPTCY, proof in.
- trustee, of, not an absolute disqualification, 40, 658, 847.
- but is ground for appointing a receiver, 982.
- his discharge barred trust debts, 915, 916.
- injunction against insolvent trustee, 855.

## INSPECTION.

- accounts, of, right of *c. q. t.* to, 690.
- documents, of, right of *c. q. t.* to, 680.
- vouchers, of, right of *c. q. t.* to, 449.

## INSPECTORSHIP.

- deed of, does not create forfeiture under clause divesting property on bankruptcy, 102.
- inspector under creditors' deed cannot profit by office, 279.

## INSTRUMENTAL TRUST.

- meaning of term explained; 18.

[The paging refers to the [" pages.]

# INSURANCE.

- company, shares in, given in succession should be converted, 300.
- payment by, of monies into Court under Trustee Relief Act, 997.
- executor not liable for neglecting to insure property, 295.
- liable for allowing policy to drop, 598.
- finer for renewal, payment of, secured by policy, 369, 370.
- on admission of copyholds, to provide fund for, 237.
- investment in purchase of annuity with life policy, 319.
- lien of trustee for monies advanced for premiums, 903.
- life of another, on, 105; upon trust for person not interested in the life, invalid, 105.
- maintenance or advancement by means of policy of, 587, 588.
- mortgagee not allowed for, in absence of stipulation, 580; but see note (a).
- Married Women's Property Acts, under, for benefit of wife and children, 789, 792.
- policy of, *chose in action*, is, within Bankruptcy Act, 243.
- letter offering to settle, held to constitute voluntary settlement of, 71.
- mortgage of, implies power to give receipts, 453.
- notice of assignment of, neglect to give, 903.
- what sufficient, 709.
- settlement of, in fraud of creditors, void, 80.
- premiums when to be paid out of income, 580.
- receipts of trustee for insurance monies, company when discharged by, 293.
- Statute 14 Geo. 3, c. 48, effect of, 105.
- trust, upon, invalid where *c. q. t.* not interested in the life, 105.
- trustee when justified in insuring trust property, 580.

# INTENTION.

- settlor, of, carried into effect in construction, &c., of trusts, 84.
- Statute of Uses, operation of, notwithstanding contrary intention of settlor, 209.

# INTEREST. Chap. XIV. sect. 5, 338—344.

- accumulations of, under Thellusson Act, 90 *et seq.*
- advances by trustee, on, 637.
- allowance of, to trustee, 577, 637 note (d).
- arrears of, what recoverable under Statutes of Limitations, 875, 882 *et seq.*
- balances, on, may be asked for on further directions, 905.
- bankruptcy, trustee in, when charged against, 338.
- compound, charged where accumulation directed, 343.
- contribution to fine for renewal of lease, computed on, 373, 374.
- defaulting trustee where charged with, 341, 342.
- trustee who is banker not allowed to charge, 281.
- costs, interest on, not allowed to trustee, 637.
- debts, on, what allowed under trusts for creditors, 525 *et seq.*
- de die in diem*, accrues, 787.
- executor, against, for monies improperly retained, 338, 339, 340.
- from what period charged, 343.
- not during first year after testator's decease, 343.
- not charged on money that never came to hand, 344.
- or lying idle through mistake, 344.
- executor decreed to pay, whether he pay costs also, 994.
- finer for renewals, what interest charged on contribution for, 372, 373, 374.
- income, not charged on arrears of, 338.
- Jamaica, in, allowed at 6 per cent., 341 note (a).
- legacy, on, allowed to child by way of maintenance from death, 410.
- in other cases from end of first year, 410.
- mesne* rents and profits, account of, not decreed with interest, 890.
- nor where purchase by trustee set aside, 491.
- mistake, trustee making, when excused from paying interest, 349.

[The paging refers to the [\*] pages.]

# INTEREST—continued.

- motion for payment into Court, when ordered on, 980.
- portions, what interest raisable in respect of, 409 *et seq.*
  - not allowed where portions charged on rents, 410.
  - allowed though portions not vested, 410.
  - rate of interest, 409 *et seq.*
- proof for, by *c. q. t.* on bankruptcy of defaulting trustee, 912.
- rate of, £4 per cent. charged against trustee retaining trust money, 340.
- £5 per cent. where direct breach of trust, 341.
- or money employed in trade, 340, 342. See *infra*, "trade."
- when allowed by way of maintenance is in discretion of Court, 410 *et seq.*
- receiver when charged with, 339.
- rents, not charged on, 491.
- repairs, on money borrowed for, 577.
- simple contract debt, on, 525.
- solicitor, allowed to, on money employed in buying up incumbrances, 276 note (*f*).
- specialty debts, on, 527.
- trade, on money employed in, by trustee, 340, 342.
  - c. q. t.* has option of £5 per cent. or actual profits, 340.
  - whether with rests, 342.
  - money lodged at banker's in trustee's name considered as so employed, 340.
- waste, in cases of, wrongdoer when and from what period charged with, 188, and note (*f*), 578.

# INTERESTED PERSON.

- not a proper trustee, 40, 665, 666.

# INTESTACY.

- cestui que trust, of, as to personal estate without next of kin, executor when entitled, 285.
  - as to real estate without heirs, whether trustee entitled, 282.
  - not so entitled now under Intestates' Estates Act, 282, 283.
- limitation of action for recovery of personal estate of intestate, 885.
- mortgagor in fee, of, without heirs, mortgagee entitled, subject to mortgagor's debts, 283, *secus* now, *ib.*
- purchaser in fee, of, without heirs, after purchase-money paid, but before conveyance, vendor keeps money and estate, 283.
- trustee of, as to trust estate, effect of, 229.
- widow of intestate, where no next of kin, only entitled to moiety, 285.

# INTESTATES' ESTATES ACT, 1884 (47 & 48 Vict. c. 71).

- Court empowered to order sale of lands of Crown, 44, 1040.
- escheat, extension of law of, to equitable estates, 282, 823.

# INTIMIDATION.

- release or confirmation obtained by, 498, 926.

# INTRUDER.

- not bound by a use, 3.

# INVENTORY.

- when trustee should make, of chattels, 207.
- trustee neglecting to take, may be deprived of costs, 207.

# INVESTMENT.

- accommodation loan, trustees should not invest by way of, 317, 324.
- Act of Parliament, under, directing special mode of investment, 311.
- advice of Court as to, may be obtained by trustee, 619 *et seq.*
- advowson, in purchase of, 503.
- annuity, in purchase of, with policy on life, 319.
- application for, service of, 311.

[The paging refers to the [\*] pages.]

INVESTMENT—*continued.*

- apportionment of dividends on change of investment, 323.
- "approved securities," in, 326.
- bank of government annuities, in, when proper, 314, 418, 562.
- conversion of securities into, when directed by Court, 298, 300.
- trustee should not sell out, to invest in irregular funds, 334.
- "bank, private, trustees may deposit to trust account at, for temporary purposes, 295.
- but not otherwise, 296.
- bank stock, in, 307 *et seq.* See BANK STOCK.
- calling in, duty of trustee as to, 287.
- direction to call in securities "not approved of by executors," 291.
- "to convert with all convenient speed," 289.
- hazardous investment, 290.
- liability of trustee improperly calling in trust investment, 336.
- cash under control of Court, of, in what securities permitted, 308.
- charity money, of, 540, 541, 542.
- Colonial securities in, 322.
- Colonial Stock Act, 1871, under, 322.
- Compulsory Church Rates Abolition Act, 1868, under, 316.
- consent, with, of tenant for life, 311, 318, 614; or other person, 318, 329.
- what consent sufficient, 318, 319, 329.
- consols, in, 314, 334, 418.
- continue investments, power to, effect of, 320, 326, 334.
- control, trustee must not put money out of his own, 296.
- or under control of co-trustee or co-executor, 296, 297, 337.
- conversion of, trustee of executor when bound to make, 287 *et seq.* See CONVERSION.
- copyholds, in purchase of, 503.
- copyholds, on mortgage of, 328.
- corporation stocks, in, 320.
- co-trustee, trustee should not lend to, 316, 325.
- trustee making investment should not rely on statement of, 265.
- debentures or debenture stock of railway company in, 312, 319, 320, 562.
- decree in administration action suspends trustee's power of, 617.
- discretion of trustee as to, Court will not in general control, 614.
- how to be exercised, 317, 318, 322, 326.
- dividends, apportionment of, on change of investment, 323.
- drainage of settled lands, in, 504.
- East India Stocks, in, 307 *et seq.*, 316, 322.
- equitable mortgage, trustee should not lend on, 331.
- equity of redemption, in purchase of, 503, 504.
- exchequer bills, in, 308, 320, 321.
- foreign bonds, in, 321.
- foreign railway company, in bonds of, 322.
- fund in Court, of, 308.
- "funds," meaning of term, 322.
- General Orders, Court empowered by recent Act to issue, as to investment of cash under its control, 308.
- government securities in, 307, 314, 321, 322, 502, 562.
- "government or good securities," meaning of term, 334.
- government or parliamentary stocks or funds, what are, 322.
- Greek bonds, in, 322.
- ground rents, in, 325, 502, 505.
- house property, in, 325, 502.
- improper investment, liability incurred by, or by non-investment, 334 *et seq.*
- capital, as to, where money improperly retained, 335.



[The paging refers to the [\*] pages.]

**INVESTMENT**—*continued*.

- where no direction to invest, 298, 313.
- where express direction to invest in funds and neglect so to do, 335.
- where direction to invest in funds or real security, 335, 336.
- when stock improperly sold out, 336.
- insufficient security, realization of, not directed in absence of *c. q. t.*, 908.
- interest, trustee when chargeable with, Chap. XIV. sect. 5, 338—344.
- See **INTEREST**.
- trustees of friendly society, by, 333.
- India stock, in, 308.
- inquiry, trustee should make, as to value of security, 324, 499.
- as to value of reversion, 328.
- as to title of borrower, 324, 500.
- Ireland, on real security in, 313, 328, 329.
- joint mortgage, on, 326.
- judgment not a "real security," 327.
- Land Improvement Act, on charges under, 329.
- existing charge under, does not preclude trustee from lending, 330.
- leaseholds for lives, on, 327; for years, 327, 328.
- loan to co-trustee, trustee should not make, 316, 325.
- Local Loans Act, 1875, under, 320.
- long annuities, in, 334, 502.
- Lord St. Leonard's Act, under, 307.
- market price of day, trustees justified in dealing at, 323.
- Metropolitan Board of Works stock, in, 316.
- Mexican bonds, duty of trustees to convert, 288.
- mines, in purchase of, 503.
- mix, trustee must not, trust property with his own, 297, 298; or with stranger's, 331, 642.
- mortgage, on, 312 *et seq.* See *infra*, **real security**.
- duty of trustee making, 499.
- navy £5 per cents., in, 334.
- new buildings, in erection of, 504.
- new £3 per cent. annuities, in, 314, 315.
- outstanding duty of trustee to call in, 287.
- part with trust money, trustee should not, except on delivery of security, 331.
- personal security, Court will not invest on, even where express power, 317.
- executor should call in investments on, 290.
- trustee should not invest on, 306, 316, 327.
- unless where express authority, 316; what equivalent to such authority, 316.
- trustee "required" to invest on, 317.
- trustees of friendly society investing on, security valid but a breach of trust, 333.
- power of, must be strictly followed, 326.
- however large, trustee must exercise discretion, 322.
- where no express power, trustee should invest in £3 per cents., 314.
- especially where successive estates, 298.
- power to vary securities implied in, 460.
- private company, in stock of, 307.
- public securities, in, 314, 316.
- purchase of land, in, under trust, 499 *et seq.* See **PURCHASE**.
- railway bonds, duty of trustees to convert, 289.
- railway bonds, mortgages or debentures, in, when authorized, 312, 326.
- real security**, in,—
- under power authorizing such investment, 323 *et seq.*

[The paging refers to the [\*] pages.]

**INVESTMENT, real security**, in—*continued*.

- buildings used in trade, 325.
- Court would not formerly order investment, 313.
- equity of redemption, trustees should not lend on security of, 330, 331.
- existing mortgages, trustee may retain, if sufficient, 291.
- form of mortgage by trustees, 331; of transfer, 332, 333.
- freehold lands, not more than two-thirds of actual value should be advanced, 325.
- ground rents, in, 325, 502, 505.
- house property, in, 325, 502.
- Ireland, mortgage of land in, when proper, 313.
- joint mortgage, 326.
- leaseholds for lives, trustees should not invest in, 327.
  - renewable for ever, they may, 327.
- leaseholds for years, *quære*, whether proper investment, 327, 328.
- mortgage to three jointly, 326.
- personal security, with judgment entered up, not a proper investment, 327.
- precautions to be taken in lending on, 324, 325.
- railway debentures or mortgages, 312.
- reversion, 328.
- road bonds and mortgages of tolls, 326.
- Scotland, lands in, 313, 329.
- second mortgage, trustees should not lend on, 330.
- stock, trustees may sell out, and invest on mortgage, 323.
  - even though the stock has fallen in price, 323.
  - should not do so for mere accommodation as to secure equal amount of stock and interim dividends, 324.
  - secus*, where security for equal amount and interim interest, 324.
- under trust for purchase of lands, 499 *et seq.* See PURCHASE.
- value and title, duty of trustee to inquire as to, 324, 325, 499.
  - what proportion of value trustee should advance, 325, 328.
- where not expressly authorized, 313.
  - quære*, whether trustee might formerly invest upon, 312, 313.
  - not where expressed direction to invest in funds, 313.
  - may now invest in real securities in United Kingdom unless expressly forbidden, 313.
- receipts, power to give, whether implied by power to invest, 460.
- reduced annuities, in, 314, 315.
- repairs and improvements of settled lands, in, 504.
- retention of, by trustees under direction to retain, 320, 326, 334.
  - improper, liability of trustees for, 335, 336.
- reversion, on mortgage or purchase of, 328.
- road bonds, on, 326.
- Scotch securities, in, 313, 329.
- second mortgage, on, 330.
- Settled Land Act, 1882, under provisions of, 311, 312, 562.
- shares in canal, insurance or railway companies, in, 319.
  - where shares can stand in one name only, 320, 326.
- solicitor, trustee should not place money with, for investment, 353 note (b).
  - See SOLICITOR.
  - should not, when lending, employ borrower's, 337.
- South Sea stock or annuities, in, 306, 307.
- statutory powers of investment by trustees, 307 *et seq.*
  - whether applicable where consent of tenant for life required, 311.
  - or to moneys paid into Court under special Acts of Parliament 311.

[The paging refers to the [\*] pages.]

# INVESTMENT—*continued.*

- stock mortgage, whether trustees may invest on, 323, 324.
- surveyor, employment of, by trustees lending money on mortgage, 324.
- temporary, in Exchequer bills, 321.
- tenant for life, apportionment in respect of dividends in favour of, on change of investment, 323,
  - power exercisable with consent of, 311, 318, 614.
  - trustee must not favour, at expense of remainderman, 317, 318, 333.
  - varying securities in favour of, 318.
- terminable securities, in, 298 *et seq.*, 320.
- timbered estate, in purchase of, 502.
- title, trustee should inquire into, 324, 325, 500.
- tolls, on mortgages of, 326,
- trade or speculation, trustee must not invest in, 319.
- Trustee Relief Act, of moneys paid into Court under, 999, 1005.
- unauthorized, duty of trustee to convert, 300, 302.
- undivided share, on mortgage of, 328.
- value, trustee should inquire as to, of mortgage property, 324, 499,
  - what proportion trustee should advance, 325, 328.
- varying securities, power of, implied in power of investment, 460.
  - when Court will insert, in settlement under executory trust, 127.
- trustees who have power of, may sell out stock and invest on mortgage, 323, 324.
- wasting securities, duty of trustee as to conversion of, 298 *et seq.*

# IRELAND.

- investment by trustees in real security in, authorized, 313.
- rate of interest in, 409.
- vesting order as to lands in, 1039 note (e).

# ISLE OF MAN.

- investment on real security in, 313, 328, 329.

# ISSUE.

- construction of word, in marriage articles, 113, 115.
- daughter included in, 114, 115, 120.
- "heirs of the body," distinguished from, 120.
- portion, where gift to issue is regarded as, to the parent, 405.
- purchase, a word of, and not of limitation, 120.
- Trustee Relief Act, directed on petition under, 1002.

# JAMAICA.

- commission for management of estates in, 628.

# JOINT.

- account, payment to, 296.
- account clause, in mortgage to trustees, 332.
- contract, effect of disclaimer as to, 200.
- liability of co-trustees for breach of trust is joint and several, 908 *et seq.*
- office, co-trustees exercise, jointly, 257.

# JOINT TENANTS.

- copyholds, of, fine payable on admission of, 236.
- devise to, if it be void for fraud as to one is void as to all, 63.
  - two joint tenants, where one is an alien, 40.
  - to two and survivor and heirs of survivor, effect of, 214.
- executory trust, words of joint ownership when construed tenancy in common, 117.
- marriage articles, in, 117.
- wills, in, not so construed, 126.
  - except where testator a parent or person *in loco parentis*, 126.
- forfeiture by one joint tenant of chattels, 223.

[The paging refers to the [\*] pages.]

# JOINT TENANTS—*continued.*

- grant to two and survivor and heirs of survivor, joint tenancy whether implied, 214.
- improvement of property by one, lien for, 165.
- incumbrance, effect of joint tenant purchasing, 280.
- infants, where they can sever joint tenancy, 117.
- marriage articles, in, construed tenancy in common, 117.
- mortgage, advance by several on, joint tenancy not implied, 164.
- partnership, *jus accrescendi* excluded in cases of, 164, 165.
- purchase by several who contribute equally, joint tenancy implied, 164, 165.
- secus*, where contribution unequal, 164, 165.
- renewal of lease by one joint tenant in his own name, effect of, 181.
- rents, receipt of, by one co-trustee, 225.
- severance of joint tenancy by trustees, 225.
- vesting order in favour of, 1017, 1031.
- wife of, not entitled to dower, 737.

# JOINTURE.

- power to charge, not authorized in executory trusts under "usual powers," 127.
- separate use, may be limited to, and made inalienable during present coverture, 758.

# JUDGMENT, Chap. XXVII. sect. 7, 794—817.

- annuitant, against, 805.
- attachment of debt, 815, 816.
- bankruptcy of debtor, judgment or execution creditor how affected by, 814, 815, 816.
- charge on land under 1 & 2 Vict. c. 110, 327, 803 *et seq.*
- charging order on stocks and shares, 806 *et seq.*
- chattel interest not affected by, until actual seizure whether legal or equitable, 795, 796.
- common law, at, effect of, 794.
- covenant to settle future property, effect of, as against judgment creditor, 224.
- decree of court of equity when operating as, 804.
- delivery in execution, does not affect land until, 812.
- what amounts to, in equity, 812, 813.
- execution of**, at law, 794, 795.
  - equitable chattel, as against, 224, 796, 815.
  - equitable interest, as against, by *elegit*, 796 *et seq.*
    - by *fi. fa.*, 795, 815.
    - by *levari facias*, 794.
  - moiety of, only, could formerly be taken in execution, 799.
    - entirety of equity of redemption, 800, 801.
    - entirety now under 1 & 2 Vict. c. 110, sect. 11, 803.
  - proviso against suing in equity until year after judgment, 806.
- land must now be delivered in execution, 812 *et seq.*
- receiver, by appointment of, 813, 814.
- whether *elegit*, &c., must be actually sued out, 814, 815.
- stocks and shares, against, 806.
- when complete, 816.
- exoneration from, what agreement or covenant amounts to, 718.
- firm, against, several liability of partners not merged in, 909.
- Frauds, Statute of, execution of trust estate by *elegit* under, 802.
- whether equitable *elegit* may be had where no legal *elegit* under statute, 802, 803.
- Ireland, in, 808 note (*f*).
- land to be converted into personalty whether bound by, 797, 805, 806.

[The paging refers to the [\*] pages.]

## JUDGMENT—*continued.*

- married woman, against, form and effect of, 770, 771, 787.
  - in favour of, is *chose in action*, 747, 748.
- money to be converted into land is bound by, 941.
- mortgage, right of judgment creditor to redeem, 797, 800, 813, 815.
- mortgagor, against, 800, 801, 805, 813, 814.
  - binding on surplus proceeds of sale of mortgaged property, 799, 805.
- notice of, how far material as against purchaser, 803, 810, 811, 816.
- priority of, in administration of assets, 835, 830 note (*f*).
- priority of judgments, 816; in register county, 816.
- priority of equitable incumbrance over, 246 note (*f*).
- purchaser for valuable consideration, judgment creditor is not, 246 note (*f*).
- purchaser, who is, within 23 & 24 Vict. c. 38, 811.
- purchasers, as between, incidence of, 718.
- receiver, equitable execution by appointment of, 813, 814.
- register county, priority of judgments as to lands in, 816.
- registration and re-registration of, 804, 809, 812, 816.
  - necessary for priority in administration of assets, 831 note.
- sale of land, remedy by, when available to creditor, 812, 814.
- search for, to be made by purchaser of land, 500, 810, 811.
- settled and unsettled estates, incidence of judgment, as between, 718.
- statutes, recent, relating to—
  - 1 & 2 Vict. c. 110, 803 *et seq.*
  - 2 & 3 Vict. c. 11, 809, 810.
  - 3 & 4 Vict. c. 82, 810.
  - 18 & 19 Vict. c. 15, 810, 811.
  - 22 & 23 Vict. c. 35, 811.
  - 23 & 24 Vict. c. 38, 811.
  - 27 & 28 Vict. c. 112, 812 *et seq.*
- surplus proceeds under trust for sale or power of sale in mortgage, whether bound by, 799, 805.
- tack, right of judgment creditor to, 800.
- trustee, against, whether chattel may be taken in execution of, 224.
- trustee, estate of, judgment binding on, 245.
  - but *c. q. t.* will be protected in equity, 245.
- Trustee Act, when judgment makes legal owner trustee within, 1025, 1026.
- vendor, against, after contract to sell, 797 *et seq.*
- vesting order in aid of, 1025, 1026, 1040.
- Westminster, under Statute of, effect of, 795.

## JUDICIAL SEPARATION.

*choses in action* of married woman how affected by, 346, 740, 757.

## JURISDICTION.

- Crown, Court of Equity has no jurisdiction over conscience of, 30.
- executor out of, vesting order as to interest of, 1023.
- foreign property, as to, 48 *et seq.*
  - equity can enforce trust of personal property, if parties within the jurisdiction, 48.
  - and of lands if parties within and no obstacle to execution of decree, 48.
  - but not if such obstacle exist, 49.
- lands abroad, jurisdiction to enforce equities, contracts or trusts of, 49, 50.
- parties out of, may now be served abroad, but this does not enlarge right to relief, 49.
- payment by trustee to *c. q. t.* out of, 353, 354, 476.
- receipt by trustees pending residence of *c. q. t.* abroad, 476.
- receiver appointed when trustees all out of, 983.
- service on parties out of, 49, 1034.

[The paging refers to the [\*] pages.]

# JURISDICTION—*continued*.

trustee residing out of, 40, 1030 ; new trustee appointed instead of, 646, 649.

though appearing by counsel may be treated as out of, 1016.

vesting order as to interest of, 1016 *et seq.* See TRUSTEE ACTS.

whether persons residing out of, may be appointed trustees, 659, 662, 1030.

what is necessary to found, 49 (*g*).

# JUROR.

cestui que trust of lands. when qualified to be, 681.

# JUS ACCRESCENDI.

excluded in cases of partnership, 164, 165.

# JUS DISPONENDI.

of *c. q. t.*, 674, 684 *et seq.* See CONVEYANCE.

# JUS HABENDI.

of *c. q. t.*, 674 *et seq.* See POSSESSION.

# JUST ALLOWANCES.

direction for, when given, 278, 890.

KENT, custom of, 25, 26. See GAVELKIND LANDS.

KING. See CROWN.

KNIGHT OF THE SHIRE. See MEMBER OF PARLIAMENT.

# LACHES. See ACQUIESCENCE ; LIMITATION OF ACTION.

account, right to, when barred by, 495, 496, 870 *et seq.*, 889.

acquiescence, distinguished from, 874.

breach of trust, right to relief for, when barred by, 495, 496, 901, 922 *et seq.*

cestui que trust, by, in setting aside sale to trustee, 495, 496.

charitable trust, in case of, 934.

constructive trust, when a bar to enforcement of, 186, 863, 864.

creditor, by, in not suing executor, 923.

creditors, by, in not suing to set aside voluntary settlement, 79.

creditor's deed, time limited in, for creditors to come in is not of the essence, 522.

disclaimer of trust, in making, effect of, 197.

equitable interest, by person entitled to, 725.

executor or administrator, of, in payment of debts, 343.

fraudulent conveyance, action to set aside, not prejudiced by, 873 note (*e*).

ignorance, mistake or poverty, when excused by, 496, 866, 870.

incumbrancer, by, where whole beneficial interest absorbed by prior incumbrancers, 923.

interest when charged against trustee guilty of, 338 *et seq.*

legal right to set aside transaction not affected by, 873 note (*e*).

purchase by trustee, when a bar to action to set aside, 495, 496, 872.

resulting trust on purchase in name of another barred by laches of purchaser, 170.

remainderman, when imputed to, 379, 866, 873, 923, 924.

tenant for life, by, as to renewal of lease, 379.

trust for payment of debts no excuse for, 520.

trustee, of, cestui que trust, not to be prejudiced by, 520, 734.

in enforcing covenant, 288, 902, 903.

in getting in trust property, 288.

in investing trust property, 266, 338, 734.

in keeping up policy, 903.

# LANCASTER.

powers of Trustee Acts extended to county palatine of, 1021.

but not in lunacy, 1021 note (*c*).

[The paging refers to the [\*] pages.]

## LAND.

- "at home," when land is considered to be, 949, 950.
- converted, directed to be, taken as money, 939 *et seq.* See CONVERSION.
- devise of, will pass money to be laid out on land, 941.
- discharged from trust where money has been raised, 449.
- portion charged on, failing, sinks for benefit of inheritance, 398 *et seq.*, 412.
- tortiously sold by trustee, *c. q. t.*, may require purchase of other lands of equal value, 902.
- or may take proceeds of sale with interest, 902.
- or present estimated value of lands sold, allowing for improvements, 902.
- trust money tortiously invested in, by trustee, may be followed, 892 *et seq.*

## LAND IMPROVEMENT ACT, 329, 330.

## LAND TAX.

- lunatic's estate, of, redeemable by sale of timber to be cut, 964.

## LANDS CLAUSES ACT.

- "absolutely entitled," trustees for sale are, within the Act, 447.
- "grant" in conveyance under, implies covenants for title, 687.
- improvements, application of purchase money in, 504.
- investment of purchase money under powers of Settled Land Acts, 562.
- leaseholds which tenant for life entitled to enjoy in specie, application of compensation for, 299 note (b).
- payment out of Court under, to tenant in tail, 960, 961.
- to trustees appointed under Settled Land Acts, 565.
- trustees' costs of petition for, 985, 986.
- sale of infants' property under, 152.
- surveyor under, trustees cannot appoint one of themselves to be, 258.

## LAPSE, 159 *et seq.* 520. See LEGACY.

## LAWFUL TRUST. Chap. VII. sect. 1, 84—94. See UNLAWFUL TRUST.

## LEASE.

- advice of Court as to granting of, may be obtained by trustee, 619.
- agricultural, duration of, 545.
- building, duration of, 546.
- cestui que trust, by, effect of, 678, 679.
- charity lands, of, 542 *et seq.* See CHARITY.
- company, to, under power of leasing, 595.
- covenants in lease to testator, indemnity of executor against, 445.
- for private advantage of trustee, improper, 542.
- equitable tenant for life, by, 676, 677.
- executor, by, 425.
- executor of lessee, liability of, 445, 446.
- landlord allowing tenant to build when compelled to grant lease, 717.
- lives, for, whether trustee may grant, 545, 546.
- non-entry on cessor of, by mistake, 887.
- notice of, presumed from recital of surrender, 185.
- option of purchase, trustee must not lease with, 425.
- power to grant, 595.
- control of Court over exercise of, 613.
- effect of, in determining legal estate taken by trustee, 219.
- improvements by tenant not to be taken into account in estimating best rent, 595.
- mines, of, 505, 553, 682. See MINES.
- Settled Estates Act, under, when conferred on trustees, 622.
- "usual power," is a, 127, 128.
- including building or mining leases where beneficial, 127, 128.
- purchaser of, shall assume its validity, 439.

[The paging refers to the [\*] pages.]

### LEASE—*continued.*

- renewal of, by trustee, tenant for life or other limited owner in own name, 180 *et seq.*, 363 *et seq.* See RENEWABLE LEASEHOLDS.
- covenant for, trustee must not enter into, 425.
- specific performance of contract for, vesting order to give effect to, 1026.
- tenant for life, by, under Settled Land Acts, 555, 557, 677 note (a), 682, 683.
- tenant right, lease obtained under cover of, is subject to equity of original term, 861.
- trust to lease confers fee-simple on trustee, 217.
- trustees, their power to grant, generally, 595.
- must not grant to or for benefit of themselves, 486.
- for sale cannot grant, 425, 595.

### LEASEHOLDS.

- assignment of, by trustees, covenants to be entered into on, 444, 445.
- to new trustees, how effected, 650, 651.
- conversion of, duty of trustee as to, 298 *et seq.*
- when bequeathed in succession, trustee should convert, 298.
- unless contrary intention can be collected, 299.
- tenant for life to what income entitled, 304.
- executor, right of, to indemnity against liabilities under 445, 446; and see 185, 238.
- freehold title, lessee or assign not entitled to proof of, 438.
- insurance of, against fire, executor not bound to effect, 295.
- investment on security of, when proper, 327, 328.
- legal estate in, when passing under bequest to trustees, 216.
- where freeholds and leaseholds coupled together, 217.
- long term, conversion of, into fee simple, 328, 596.
- renewable, 180 *et seq.*, 363 *et seq.* See RENEWABLE LEASEHOLDS.
- sale of, proof of title on, 438, 439, 440.
- settlement of, on trusts to correspond with freeholds, 125. See EXECUTORY TRUSTS.
- title deeds of, executor may hold, until all debts paid, 680.
- trustee of, liable for covenants, 238; but entitled to be indemnified out of trust estate, 238.
- trustees for sale of, cannot require covenant of indemnity from purchaser, 444.
- vesting order as to, 1018, 1026, 1031.

### LEGACY.

- abroad, where legatee is, money may be paid into Court, 360.
- accounts, legatee may require inspection of, but no copy, 691.
- ademption of, by subsequent advance to child, 401 *et seq.*
- administration, what legacies will be paid without suing out, 354.
- annuity, for purchase of, when legatee may claim immediate payment, 574, 690.
- appropriation of by executor, 204, 205, 581, 696.
- assent to, by executor, 205, 477.
- capital and income of residue, how to be apportioned between, 302.
- charge of, on land, when discharged, 449.
- on particular property, distinguished from exception, 154.
- power of selling or mortgaging to raise, in whom vested, 467, 468.
- who entitled on failure of charge, 154, 157 *et seq.*
- charity, to, out of sale monies, 950.
- child, to, regarded as portion unless otherwise expressed, 404.
- class, to, maintenance when allowed out of, 589.
- conditional or contingent charge of, 154, 157.
- tenant for life entitled to income of, until contingency happens, 302.
- costs of legatee's action, 988.
- co-trustee, of, lien on, for contribution, 910.



[The paging refers to the [\*] pages.]

### LEGACY—*continued.*

- creditor of testator, right of, to recover assets from legatee, 36.
- devised real estate, out of, which lapses or is void, sinks for benefit of devisee if by way of charge, 157.
- if by way of exception, results to heir, 157.
- or falls into residuary devise under 1 Vict. c. 26, s. 35, 159.
- whether it can pass under a gift of residuary personalty, 159.
- duty on, 441, 520, 949. See LEGACY DUTY.
- executor, to, for trouble, 629.
- executor may claim, though he renounce probate, 197.
- might disclaim, and take commission for trouble as to estate in East Indies, 629.
- powers of executor who is also legatee, 477, 478.
- following trust money into hands of legatee, 906.
- fraudulent sale by executor, legatee may impeach, 483.
- heir, to, will not necessarily rebut resulting trust, 147.
- infant, to, how to be paid, 355, 360; appropriation of, 592; maintenance when allowed out of income of, 582 *et seq.*; out of capital, 585.
- interest on, when paid out of reversion which has fallen in, 305.
- when allowed by way of maintenance, 410, 582 *et seq.*
- lapse, charitable legacy, of, 161 note (d).
- none of legacies to creditors in satisfaction of debts, 520.
- lapse of, given out of proceeds of sale of realty, effect of, 159, 160.
- Limitations, Statute of, legacy when barred by, 884, 885, 901.
- over payment of, legatee when bound to refund, 356, 357.
- parol declaration of trust of, 65.
- partner, to, may be set off against debt owing by firm, 701.
- payment of, legatee may claim, when exclusively interested in legacy, 690.
- time for, 581.
- where legatee deceased, 354.
- where legatee infant, or beyond seas, 360.
- portion, regarded as, to a younger child, 404.
- not where contingent only, 407.
- refund, legatee when bound to, 357.
- release, whether legatee bound to give, 358, 359; effect of, when given, 359, 924.
- residuary legatee, executor who is, powers of, 479, 480.
- lien on estate, when entitled to, 477.
- refund, when bound to, 357.
- settlement of account with one, 357, 592.
- set off, between legatee and executor, 696, 699.
- specific legatee, right of, to enjoyment of income in specie, 299.
- trust for payment of debts and legacies, effect of, 456, 457, 458, 459, 523.
- See DEBT; RECEIPT.
- trustee of, may be attesting witness to will, 275 note (c).

### LEGACY DUTY.

- creditor when liable to pay, 520.
- debts proved in bankruptcy of which payment is directed by will are subject to, 520.
- land converted in equity is subject to 949.
- money to be laid out on a purchase of land is subject to, 941 note (f).
- secret trust, duty payable by apparent beneficial owner who holds upon, 62 note (b).
- trustees can pass estate free from, 441.

### LEGAL ESTATE. Chap. XII., 209—250.

- account when granted at instance of owner of, 886, 890.
- assignment of, trustee may make, 246. See *infra*, conveyance.
- but assignee bound by trust, unless purchaser without notice, 246.

[The paging refers to the [\*] pages.]

LEGAL ESTATE—*continued.*

- bankruptcy of trustee, how affected by, 239, 240, 242.
- trustee in bankruptcy taking, is bound by trusts, 239, 240.
- burdens annexed to legal estate in trustee, 234 *et seq.* See *infra* privileges.
- cestui que trust, action by, for protection of legal estate, 853.
- cestui que use empowered to pass, by 1 Ric. 3, c. 1...4, 5.
- charge of debts on, not sufficient to exclude operation of Statute of Uses, 211.
- legal fee when passing by virtue of, 218.
- charity, secret trust for, devise of legal estate good, but equity acts on conscience of devisee, 66.
- charity trustees, majority of, may pass legal estate, 259, 540, 547.
- legal estate vested in new trustees without conveyance, 851, 852.
- chattel interest, trustees when held to take, 220.
- chattels, devolution of, to administrator or executor of trustee, 223.
- subject to trust, 246.
- codicil substituting "trustee," effect of, 215.
- commensurate with trust if possible, 213 *et seq.*
- contingent remainder, existence of, does not shew that trustee takes legal estate, 384.
- conveyance of, does not transfer powers of trustees, 257, 258.
- not essential to valid appointment of new trustee, 650.
- right of *c. q. t.* to call for, 382, 383, 684 *et seq.*
- right of trustee to make, 225.
- copyholds, in, when passing under devise to trustees, 211.
- surrender to use of will formerly necessary to pass, 721.
- curtailed from nature of trust, 215 *et seq.*
- curtesy, is subject to, in trustee, 11, 221; but tenant by, bound by trust, 9, 10, 12, 15, 246.
- devise or bequest of, trustee might make, 226, 229; *secus* now since Conveyancing Act, 1881, 226, 229.
- general devise, when it passed under, 226, 227, 228.
- devisee whether competent to, execute trusts, 230 *et seq.*
- notwithstanding devise or bequests, vests now in personal representatives of trustee, 226, 229.
- devolution of, in trustee. Chap. XII. sect. 2, 221.
- under Conveyancing Act, 1881, 222, 226.
- under Municipal Corporations Act, 852.
- under Peto's Act, 852.
- discretionary powers superadded so devise to trustees, effect of, 218, 219.
- disseisin by *c. q. t.*, effect of, 882.
- disseisor of trustee not bound by trust, 15, 250.
- dower legal estate in trustee is subject to, 221; but dowress bound by trust, 9, 12, 15, 16, 246.
- enlarged, when by nature of trust, 213.
- equitable interest compared with, 45, 46.
- escheat, estate in trustee formerly subject to, *secus* now 221, 250.
- copyholds and customary freeholds, as to, 248.
- equity of redemption, as to, 248.
- lord taking by, whether bound by trust, 247 *et seq.*
- executor, right of, to call for conveyance of, 466.
- when empowered to convey, 222, 466, 469.
- fee simple, when trustee takes, without word "heirs," 213, 218, 219, 220.
- forfeiture, estate in trustee formerly liable to, *secus*, now, 221.
- but lord was bound by trust, 247.
- equitable interest, how affected by, 820, 821.
- getting in, duty of trustee as to, 287.
- grant or devise to two and survivor, effect of, 214, 215.
- heir, devolution of trust estate to, 246; bound by, trust, 246.

[The paging refers to the [\*] pages.]

LEGAL ESTATE—*continued*.

- husband getting in, of wife's equitable interest, effect of, 747, 750, 751.
- indefinite chattel interest, trustee not to be deemed to take, under simple devise to him, 220.
- judgment against mortgagee, effect of, 805 note (d).
- against trustee binds trust estate, but *c. q. t.* protected, 245.
- lease, trust to, confers fee simple, 217.
- secus* where power of leasing not intended to affect the fee, 219, 220.
- legal personal representative, devolution of trust estate upon, under 44 & 45 Vict. c. 41, 222, 226.
- maintenance, provision for, held to show intention to pass legal estate, 211,
- majority of charity trustees empowered to convey, 259.
- mortgages, in, distinction between, and trust estates, 228.
- net rents, trust to permit A. to receive, 211.
- "pay" or permit to receive," trust to, whether legal estate passes by, 210, 211, 212, 216.
- persons taking, bound by trust, 246 *et seq.*, 833.
- priority by reason of, abolished by 37 & 38 Vict. c. 78, but restored by 38 & 39 Vict. c. 87, 863.
- privileges and burdens annexed to legal estate in trustee, 234 *et seq.*
  - actions, trustee brings, 234, 241.
  - bankruptcy, trustee proves in, 234.
  - copyholds, trustee pays admission fine to, 235 *et seq.*, but is entitled to reimbursement out of trust estate, 229.
  - living, trustee presents to, 234.
  - rates, trustee liable for, 235.
  - steward of manor, trustee appoints, 234.
  - title deeds, as to, 679, 680. See TITLE DEEDS.
  - trading, trustee, amenable to bankrupt laws, 238.
  - vote for coroner, whether trustee entitled to, 234.
  - not for member of Parliament, 235.
- purchase, trustees for, should get in legal estate, 504.
- purchaser without notice cannot protect himself by getting in, 858.
- quantity of, taken by trustees, 312 *et seq.*
  - determined by nature of trust, 213.
- rules restricting limitation of, not applicable to trusts, 84; *e. g.*, rule that no fee can be upon a fee, *ib.*; or no life estate in chattels, 85.
- sell, trust to, confers a fee, 213.
- special trust conveyance upon not within Statute of Uses, 210.
- supplied on account of trust, 213.
- transfer of, when necessary in order to constitute trust, 696 *et seq.*
- trust legal estate sufficient for execution of, implied, 213.
  - but not carried further than the complete execution of the trust requires, 213.
- persons taking legal estate bound by trust, 246 *et seq.*, 833.
- trustee cannot come into Court of equity to recover, 284, 285.
- "trustee," devise whether implied by use of word, 215.
- uses, devise to, when legal estate passes to trustees under, 219.
- Uses, Statute of, when legal estate executed by, in *c. q. t.* 209.
- separate use, trust for, is executed by statute, 210.
- special trusts not within, 210. See SPECIAL TRUST.
- trust to pay rents to A. executed by statute, 210.
  - to permit A. to receive rents, *secus*, 210, 211.
  - to pay unto or permit A. to receive, *quære*, 212.
- vesting the legal estate in the trustee, 209 *et seq.*
- wills, in gift under, legal estate supplied or enlarged by reason of character of trust, 213.
- Wills Act, enactment of, as to estate taken by trustees, 220.

[The paging refers to the [\*] pages.]

# LEGAL POWER.

distinguished from equitable, 572, 598.

# LEGAL TITLE.

relief upon, when granted in Court of equity, 886.

# LEGATEE. See LEGACY.

# LESSEE. See LEASE.

not prejudiced where purchase by trustee for sale set aside, 492.

# LETTER.

declaration of trust by, when sufficient, 56.

parol evidence admissible as to circumstances under which written, 56.

# LETTERS PATENT.

necessary for declaration of trust by Crown, 21, 52.

# LEVARI FACIAS.

execution under, 794.

writ of, not to be in future issued in civil proceeding, 795.

# LEX LOCI, 49.

descent of trust is subject to, 698.

# LIEN.

agent, of, on trust estate for his charges, 641.

bank, of, on shares in name of trustee, 715.

cestui que trust, of, on property into which trust estate is tortiously converted, 241, 892, 894, 897.

for advances by him to trustees, 640, 641.

none against land property sold for proceeds misapplied, 449.

costs of suit when postponed to lien of trustee for expenses, 639, 640.

creditor having specific lien, proof of debt by, 521.

whether he releases by executing trust deed for payment of debts, 521, 522.

decree creates, on real estate, 830 note (f); but see 810, 811, 817.

deposit by way of, is not forfeited on bankruptcy of banker, 244.

devise to debtor, whether created by, 912.

improvements, for by trustee, 184.

joint tenant, of, for improvements, 165.

judgment creditor, of, on lands of debtor, 801, 813. See JUDGMENT.

land abroad, against, not enforceable, 49.

legacy of trustee who has committed a breach of trust is subject to, in favour of co-trustee, 910.

married woman's contract does not create, on separate property, 764.

monies in hands of Secretaries of State for public purposes, against, 642.

policy monies, on, for payment of premiums, 903.

purchaser, personal representative of, dying without heir after payment of purchase money, and before a conveyance, has a lien on the estate, 283.

without notice of lien, bound by, 858.

renewal of lease, in respect of, 181, 371, 377.

residuary legatee, of, on estate, 477.

solicitor, of, for costs, 696, 785. See SOLICITOR.

specialty creditor has not, upon estate, 524.

specific preferred to general, 718, 720.

tenant for life, of, renewing lease, for contribution from remainderman, 184, 371, 377.

trustee, of, for expenses, &c., 638 *et seq.*

breach of duty, trustee committing, not entitled to, 640, 643.

contribution, for, against, co-trustee, 910, 912.

costs of purchase, for, on purchased estate, 505.

creditors of business carried on by trustee, when entitled to benefit of, 638, 639.

[The paging refers to the [\*] pages.]

**LIEN**—*continued*.

- improvements, for, 184, 640.
- overpayment, for, on interest of *c. q. t.*, 356.
- persons employed by trustee have no lien upon trust fund, 641.
- secus* if trustee positively directed to employ particular agent, 641.
- policy monies, on, for monies advanced for premiums, 903.
- priority of, over costs of action, 639, 640.
- remedy for enforcement of, 640, 642, 643.
- renewal of lease, in respect of expenses of, 184.
- several estates, held on same trusts under same instrument, are subject to, 642.
- secus* where trusts or instruments different, *ib.*
- void trust deed, under, 640.
- vendor**, of, for purchase money, 714.
- heir of vendor bound to discharge, 943 note (c).
- may be postponed to equitable mortgage, 714.
- notice of, purchaser having, is bound, 858.
- waiver of, by proof in bankruptcy, 912.

**LIFE.** See **TENANT FOR LIFE**.

**LIMITATION.**

- action or suit, of. See **LIMITATION OF ACTION**; **LIMITATION, STATUTES OF**.
- chattels how far capable of, at law, by will, 85; by deed, *ib.*
- by way of trusts, 85.
- executory trust of chattels, what limitations directed under, 115. See **EXECUTORY TRUST**.
- gift of personalty with limitations appropriate to realty, 948.
- over, on alienation or bankruptcy, effect of, 101 *et seq.* See **ALIENATION**; **BANKRUPTCY**.
- personalty, of, cannot be made, so as to knit same entirely to realty, 116.
- words of, how far required to create equitable fee under will or deed, 109.

**LIMITATION OF ACTION.**

- account, action for, 871, 886 *et seq.*, 889, 890.
- acquiescence**, by, 873 *et seq.*
  - (1) when act done with full knowledge of plaintiff, 873.
  - (2) when he stands by without objecting, 873.
  - secus* if party dealing with property knew the real owner's right, 874.
- analogy**, by, to **Statutes of Limitation**, 864 *et seq.*
  - distress, ignorance, mistake or poverty, delay not excused by, 866.
  - concealed fraud, in cases of, 868.
  - period of limitation adopted by Court, 864 *et seq.*
    - five years in case of fine by volunteer without notice of constructive trust, 866.
    - remainderman of equity of redemption, as against, 866.
    - twenty years equitable bar by analogy to Statute of James, 865.
  - constructive trust may be barred by lapse of time, 863, 864, 872.
  - delay, by reason of, 869 *et seq.* See *infra.*, **laches**.
  - devastavit, claim against executors for, when barred, 356, 357.
  - fraud, in cases of, 868, 869.
  - ignorance of rights, when an excuse for delay, 866, 870.
  - inconvenience, on ground of, 870 *et seq.*
    - account against trustees of charity, 934 *et seq.*
    - when parties dead and vouchers, &c., lost, 871.
    - whether mere lapse of time a bar, 872.
  - laches** in application to Court, by reason of, 869 *et seq.*
    - accounts between partners, as to, 872.

[The paging refers to the [\*] pages.]

# **LIMITATION OF ACTION—continued.**

- constructive trust, to enforce, 186, 863, 864, 872.
- fraud, in cases of, 868, 869.
- purchase by trustee or solicitor, to set aside, 495, 496, 872.
- reversionary interest, in respect of, 872, 873, 923.
- specific performance, for, 872.
- Statute of Limitations, when there is, 873.
- trust for payment of debts does not justify, 520.
- mistake when an excuse for delay, 866, 870.
- poverty when an excuse for delay, 866, 870.
- presumption**, by, of release or other act, after lapse of time, 869 *et seq.*
  - charities, as to, 936.
  - class, as against, does not easily arise, 870.
  - corporation, against, not readily made, 936.
  - distress or poverty of persons entitled, effect of, 870.
  - favoured in law, 870.
  - ground of, for purpose of quieting possession, 869, 870.
  - ignorance of rights, effect of, 870.
  - mistake as to rights, effect of, 870.
  - period of, 870.
  - release when presumed, 870 *et seq.*
- statute, by, 874 *et seq.* See **LIMITATION, STATUTES OF.**

# **LIMITATION, STATUTES OF, 874 *et seq.***

- absence beyond seas, effect of, 875.
- account, formerly not applicable to action for, 871.
  - action of, how affected by statutes, 886 *et seq.*, 889, 890.
- acknowledgment of debt by one trustee, effect of, 259.
- acquiescence, effect of, not interfered with by, 875, 876.
- agent when entitled to benefit of, 901.
- arrears of rent**, as to action for, 875, 882 *et seq.*, 890:
  - express trust, in case of, *c. q. t.*, might recover all, 882, 883.
    - but *secus* now under Real Property Limitation Act, 1874, 883.
    - where express trustee ignorant of his true character, 889.
  - period of limitation of action for, limited to six years, 882.
- breach of trust, action in respect of, how affected by statutes, 897, 900, 901, 906.
- cestui que trust and trustee, application of, as between, 876, 880.
  - not in case of express trust, 876.
  - volunteer claiming under trustee, 876.
- cestui que trust or trustee and stranger, apply as between, 866 *et seq.*, 880.
  - quære, where *c. q. t.* an infant, 868.
- charge** distinguished from express trust, 878, 879, 902.
  - coupled with duty, 879.
    - express trust, 875 note (b), 879, 890, 901, 902.
    - of debts, when barred, 878.
- charities how affected by, 884, 934.
- constructive trust not saved by sect. 25...877, 878.
- covenants and contracts, application of statutes to, 867.
- debts**, charge for payment of, when barred, 878.
  - executor, whether liable for paying statute-barred debts, 590.
  - trust for payment of, effect of, 519 *et seq.*, 877 note (e), 878.
    - whether when trustee is barred, *c. q. t.* is also barred, 520, 867.
- demurrer, whether the subject of, 869 note (b).
- directors of company paying dividends out of capital cannot plead, 901.
- disability of *c. q. t.*, effect of, 867 *et seq.*, 876.
  - term of six years now allowed after cesser of, 875, 876.
- disseisin by *c. q. t.*, 882.
- dower, arrears of, action for, when barred, 891.

[The paging refers to the [\*] pages.]

# **LIMITATION, STATUTES OF—continued.**

- express trust**, in case of, 520, 863, 874, 875, 885, 901, 902.
  - distinguished from charge, 878, 879.
  - time when beginning to run against assignee of trustee, 876.
  - what is, within the Act, 520, 877, 878.
- fraud**, statute runs from discovery of, 868, 875, 878, 901.
- ignorance of rights** does not prevent operation of, 866.
- infant**, action by, for account, when barred, 891.
- interest**, arrears of, action for, when barred, 875, 882 *et seq.*
- intestate**, right to personal estate of, how affected by recent Act, 885.
- lashes**, bar from, where statute applies, 873, 901.
- land or rent**, action to recover, when barred by, 874, 875.
- lands**, equitable claim to, when barred, 865, 867 *et seq.*
- legacy**, action to recover, when barred, 884, 885.
- married woman**, when time begins to run against, 761.
  - whether applicable to action against separate property of, 772.
- mesne rents and profits**, action for account of, how affected by, 886 *et seq.*
- mistake** does not prevent operation of, 866.
- money charged on land**, action for, when barred, 885.
- mortgagee**, when time runs in favour of, 866.
- next of kin**, action by, when barred, 885.
- pleaded**, must be, 356, 869.
  - cannot be by person having notice of trust, 867.
- possession**, adverse, 882.
  - cestui que trust, by, effect of, 881, 882.
  - trustee, by, who pays, rent, &c. to wrong person is the possession of the rightful *c. q. t.*, 882; and no adverse possession by wrongful recipient, 882.
- poverty of plaintiff** does not affect operation of, 866.
- purchaser**, as against, 876.
  - under marriage settlement, 876.
- purchaser for value without notice of trust** may rely on, 876.
- receiver** whether express trustee within, 885 note (c).
- redemption**, action for, when barred, 866.
- remainderman**, when time begins to run against, 866, 875.
- rent**, action to recover, when barred by, 874, 875, 882 *et seq.*
- rents and profits**, action for account of, how affected by, 886 *et seq.*, 889, 890.
- residue**, or share of, action for, when barred, 884.
- resulting trust**, when an express trust within, 877.
- reversionary**, where right of *c. q. t.* is, 876.
- solicitor receiving money**, whether he can plead, 901 note (b).
- tenant at will**, application of statutes to, 881.
  - but *c. q. t.* not to be deemed, 881.
- trust**, 874 *et seq.* See *supra*, **express trust**.
- trust to sell and pay debts**, 520.
- trustee allowing**, to run, when responsible, 288.
- volunteer claiming under trustee** cannot rely on, 876.
- waste**, action in respect of, when barred, 188, 189.

## **LIQUIDATOR.**

- official, costs of, 991.

## **LIS PENDENS.**

- effect of, upon powers of trustee, 669. See **ACTION**.
- trustee appointed during, should be sanctioned by Court, 669.
  - may during *lis pendens* solicit discharge by petition or motion, 672.

## **LOAN.**

- charitable, amount of, adjusted according to value of money, 538, 539.
- investment on, 306, 316, 327. See **INVESTMENT**.
- trustee, by, in breach of trust, borrower how affected with notice, 862.

[The paging refers to the [\*] pages.]

**LOCAL LOANS ACT, 1875.**

investment under, 320.

**LOCKE KING'S ACT.**

share of proceeds of land is not an interest in land within, 951.

**LOCO PARENTIS.**

ademption, presumption of, applies only to persons in, 402.

advancement, presumption of, applies to relatives to whom purchaser in *loco parentis*, 177.

but not to strangers, 178.

intention to assume parental character, how evidenced, 402, 403.

portions, doctrine of, whether confined to persons in, 389 *et seq.*

satisfaction, presumption of, applies only to persons in, 402.

who regarded as being in, 391 note (a), 402.

**LONDON, CITY OF, PAROCHIAL CHARITIES ACT, 537.**

**LONG ANNUITIES.**

conversion of, by trustees, when compulsory or desirable, 298, 300, 304.

enjoyment of, in specie, direction for, when sufficient, 300.

investment in, by trustees undesirable, 334, 502.

**LORD CHANCELLOR.** See **CHANCELLOR.**

**LORD CRANWORTH'S ACT (23 & 24 Vict. c. 145).**

appointment of new trustees under powers of, 647, 648.

maintenance of infant, powers as to, 583.

power of trustees to give receipts, 451.

repeal of, 294, 315, 366, 434, 436, 437, 452, 591.

**LORD OF MANOR.** See **COPYHOLD.**

consent of, to vesting order, when necessary, 1025.

escheat, taking by, whether bound by trust, 11, 12, 16, 247, *et seq.*

infant, may give effect to custom, 37.

**LORD ST. LEONARDS' ACT (22 & 23 Vict. c. 35).** See **STATUTES.**

advertisement for creditors under, 362.

assignment of chattels real, &c., to assignor and another, 651.

charge of debts or legacies, effect of, 464, 467, 468, 469.

investment under, 307, 329.

petition under, for advice, &c., 352, 618 *et seq.*

power of attorney, trustee paying under, when exempt from liability, 354.

receipts, power of trustees, &c., to give, 451.

**LORDS JUSTICES.**

jurisdiction of, in lunacy, 1044.

**LOSS.**

trust property, of, trustee when liable for, 294, *et seq.*, 907 *et seq.*

**LOTS.**

abstract of title, right to, on sale in lots, 440.

resale in, of trust property purchased by trustee, 493.

whether trustee for sale may sell in, 437.

**LUNACY.** See **LUNATIC.**

**LUNATIC.**

administration of trust in lunacy refused, 1014 note (e).

committees of, are regarded as mere bailiffs, 261. See **COMMITTEE OF LUNATIC.**

contingent right of, power of Court to discharge, 1014 *et seq.*

**conversion of property of**, 963 *et seq.*

benefit of lunatic, conversion only allowed where it is for, 963, 965.

copyholds, enfranchisement of, 966, 967.

Partition Act, sale under, does not effect conversion, 151.



[The paging refers to the [\*] pages.]

**LUNATIC, conversion of property of—continued.**

- personalty applied in aid of realty, 966.
- charge on realty, to pay off, 966.
- finer on renewal or admission, to detract, 965.
- improvements, for, 965, 966.
- necessary repairs or expenses, for, 966.
- real estate sold for payment of debts, 964.
- timber, proceeds of, applied to pay debts, redeem land tax, &c., 964.
- cut on estate *ex parte paternā* applied for benefit of estate *ex parte maternā*, 964.
- felled tortiously by stranger, proceeds belong to next of kin, 966.
- purchased, should not be, for repairs, &c., where it might be cut, 965.
- surplus proceeds belong to next of kin, 964.
- deed of, when void, 26; feoffment voidable by heir, 26.
- disability how remedied where lunatic mortgagee, trustee, &c., 1013, 1014.
- See **TRUSTEE ACTS.**
- election, lunatic cannot make, 954.
- feoffment of, voidable by heir only, 26.
- fine or recovery by, valid unless reversed, 26.
- foreign, dividends only paid to curator of, 999.
- heir of founder of charity being lunatic, visitatorial power exercised by Crown, 530.
- husband, concurrence of, in wife's deed when dispensed with, 35.
- infant, position of, distinguished from lunatic's, 967.
- jurisdiction of Lords Justices in lunacy, 1013, 1039.
- maintenance of, directed out of fund which most for his benefit, 965.
- maintenance of, discretion of trustees as to, 614.
- mortgagee, vesting order as to property of, 1013, 1014 *et seq.* See **TRUSTEE ACTS.**
- payment into Court of money belonging to, 1036.
- payment to committee of, 355.
- personal representative, power to make vesting order as to property of, 1015.
- reconversion of property of, 964.
- recovery by, valid unless reversed, 25.
- tenant for life, exercise of powers of Settled Land Act by, 552, 558.
- trust declared by, Court may set aside, 26.
- but would not interfere against purchaser without notice, 26.
- trustee**, appointment of new trustee in place of, 1013, 1028.
- vesting order as to interest of, 1013 *et seq.* 1020 note (d), 1026, 1034.
- Trustee Acts, proceedings under, when to be in lunacy and when in chancery, 1013, 1015, 1029, 1030.
- Trustee Relief Act, repayment ordered to guardians out of lunatic's funds of expenses incurred for his support, 997.
- vesting order as to lands or stock of, 1013, 1014, 1026, 1034. See **TRUSTEE ACTS.**

**MAINTENANCE, 581 et seq.**

- accumulation, out of, form of order for, 587.
- class of persons, out of legacy to, 589.
- Conveyancing Act, 1881, powers of maintenance under, 579, 582, 584.
- should be expressly excluded where infant takes for life only, 584.
- creditors, when entitled to benefit of trust for maintenance of bankrupt, 99 *et seq.*, 690.
- where trust for benefit of bankrupt and another, 99.
- where trustees have a bare discretionary power, 100.
- when entitled to charge under 1 & 2 Vict. c. 110, 805.
- direction to co-trustees to apply income for, not terminated by death of one, 261.

[The paging refers to the [\*] pages.]

# **MAINTENANCE—continued.**

- directions as to, when Court will give, 619.
- discretion of trustees as to, not in general interfered with by Court, 614.
- gift to parent for maintenance of children, whether trust for children implied, 137 *et seq.*
- infant, to, when allowed, 582 *et seq.*
  - accumulation, trust for, effect of, 587.
  - capital, out of, 585.
  - contingent, where legacy is, 583.
  - interest of legacy, out of, 410 *et seq.*, 582.
  - whether trustee should allow, when father alive, 586; whether to mother after death of father, 586, 587.
- legal estate, provision for maintenance held to show intention to pass, 211
- Lord Cransworth's Act, powers of, when applicable, 583.
- lunatic, of, 614, 965. See LUNATIC.
- past, when allowed, 582, 586.
- payment to guardian, trustee when discharged by, 614, 615.
- policy of assurance, by means of, 587.
- power of, statutory, 129, 579, 582, 583.
- power of, whether authorized by executory trust silent as to powers, 126, and see note (g).
  - when Court will insert, in settlement under executory trust, 127.
- savings out of, allowed to wife on separation belong to her absolutely, 774.
- Settled Land Act, 1882, powers of trustees under, 129.
- trust for, bankruptcy of *c. q. t.*, effect of, 99 *et seq.*, 690.
  - cestui que trust cannot call for transfer of proportionate share, 140.
  - duties, &c., of person bound by trust, 138, 139.
  - forisfiliation of child, trust ceases on, 139.
  - majority of infant, whether trust ceases on, 139.
  - nature and effect of, 138, 139, 805.
  - to apply rents for, is a special trust, 210.
  - to "provide suitably" for younger children, held not too vague, 117.
  - words sufficient to create, 137 *et seq.*
- trustee may expend money for, if *c. q. t.* incapable, 581.
  - but more prudent course is to apply to the Court, 581.
  - right to sue trustee, whether assignable, 139.
- Trustee Relief Act, order under, constitutes infant ward of Court, 1002.

# **MAJORITY.**

- cestuis que trustent, of, cannot consent to trustees' relinquishment of trust, 645.
- charity trustees, of, binds minority, 259, 540, 547, 592, 597.
- creditors, of, whether they can sanction purchase by trustee, 498.
- infant protected by Court after attaining, 925.
- trustees, of, when they may bind the rest, 259, 540, 547, 592, 597.
- may pay money into Court, 361, 997, 1007.

# **MALINS'S ACT (20 & 21 Vict. c. 57).**

- assignment under, effect of, 23.
- choses in action* of married woman, powers of, as to, 23, 24.
  - whether Act applies to *choses in action* in possession, 23.
  - does not apply to share under an intestacy, 23.
  - or to interest arising under power created before Act, 23.

# **MANAGEMENT. See POWER.**

- advice of Court as to, how obtained by trustee, 618 *et seq.*
- allowance for, when made to person in fiduciary position, 628 *et seq.*
- infant's land, of, by trustees during minority, 578 *et seq.*

# **MANDAMUS.**

- lord of manor, to, to admit heir of trustee, 285.

[The paging refers to the [\*] pages.]

**MANOR.** See **LORD OF MANOR.**

trustee of, appoints steward but must observe directions of *c. q. t.*, 234.

**MANSION HOUSE.**

lease or sale of, under Settled Land Act, 560.

repair or rebuilding of, by trustees, 576.

**MARKET OVERT.**

owner's title to goods sold in, barred, 860, 893.

but if they come to trespasser again the owner may seize them, 860.

**MARRIAGE.**

forfeiture, when it creates, under clause against alienation, 102.

valuable consideration, is, 876,

**MARRIAGE ARTICLES.**

executory trusts in, construction of, 112 *et seq.* See **EXECUTORY TRUST.**

distinguished from executory trusts in wills, 112.

money to be laid out in land where bound by, 939.

notice of, how far binding on purchaser, 860, 861.

renewable leaseholds, of, direction to renew implied in, 365.

**MARRIED WOMAN.**

accounts, may settle, with trustee though restrained from anticipation, 786.

acknowledgment of deed by, when necessary, 22, 35.

acquiescence by, 496, 918 *et seq.*

not bound by, in purchase by trustee, 496.

except as to separate property where no restraint on anticipation, 496, 919.

quære where restrained from anticipation, 911, 919, 925, 926.

separate property, in husband's receipt of, 777 *et seq.*

action against, 770 *et seq.*

action by, as to separate property, 759.

since Married Women's Property Act, 1882, 759, 760, 761, 791 *et seq.*

advancement for, presumed on purchase by husband in her name, 177.

Agricultural Holdings (England) Act, 1883, powers of married woman under, 793.

alimony allowed to, is inalienable, 750.

annuity to married woman by Commissioners, 791.

antenuptial debts, is now liable for, 769, 787.

liability of husband in respect of her, 790, 793.

assets, property subject to her power of appointment when available as, 919 *et seq.*

attachment against, where answering separately as to separate property, 760.

attorney, may appoint, 39, 762.

bankrupt, cannot be made, 790 note (b), unless trading separately from husband, 791.

bare trustee may convey as *feme sole*, 36.

bill of exchange by, binds separate estate, 761, 763.

bond by, binds separate estate, 761, 762, 763.

breach of trust by, husband liable for, 33; except in cases within Married Woman's Property Act, 1882, *ib.*

liability of married woman's separate estate for, 768 *et seq.*, 911, 919 *et seq.*, 925.

none in case of restraint against anticipation, 787, 911, 919, 925, 926.

business, husband permitting wife to carry on, effect of, 755.

chattels personal of, husband's right to, 739.

chattels real of, husband's power over, 24; if equitable, 746, 747.

where interest contingent, 746.

effect of husband's forfeiture upon, 820.

children, her liability for maintenance of her, 793.

[The paging refers to the [\*] pages.]

**MARRIED WOMAN**—*continued*.

- choses in action of, powers of disposition over, 23, 24.
- alienation of, how far marriage of *feme* is, 102.
- divorce, judicial separation or protection order, how affected by, 346.
- husband, power of, to create trust *sub modo*, 24.
- taking out administration, is entitled to undisposed of, 775.
- Married Women's Property Act, 1882, under, 24.
- possessory choses, equity to settlement out of, may be waived under Malins's Act 23, 24.
- reduction of, into possession, 24, 739, 740, 741, 745.
- reversionary choses, under Malins's Act, 23.
- survivorship of, to her, on husband's death, 744 *et seq.*; none by Scotch law, 347.
- company, is liable as contributory in winding up of, 769.
- compromise on behalf of, jurisdiction of Court to sanction, 926.
- confirmation by, of breach of trust formerly inoperative except as to separate property without restraint, 497.
- secus* now under Married Women's Property Act, 1882, 497.
- consent of, to investment, when and how to be given, 318, 329.
- to transfer to husband may be revoked, 742.
- contingent interest, may alienate, 779.
- contract by, 761 *et seq.*
- husband, with, in equity, allowed, 754.
- incapacity of married woman to contract, 761, 918.
- formerly absolute except as to her separate property without restraint, 761.
- secus* now under Married Women's Property Act, 1882, 762, 769.
- intention, in contravention of, 765, 766.
- real estate, as to, under Fines and Recoveries Act, 761.
- verbal, how far separate property bound by, 764 *et seq.*
- written, as by bond, bill of exchange, promissory note, effect of, 761.
- when necessary, 765.
- conversion of property of, by sale under order of Court, 151, 152.
- conveyance by, 34, 35, 36.
- concurrence of husband, power of Court to dispense with, 35.
- covenant by, when infant, ratification of, 776.
- creditor of, his remedies against separate property, 764, 773. See *infra*, **separate property**.
- curtesy, right of husband as tenant by, 733 *et seq.* See **CURTESY**.
- death of, rights of husbands on 752.
- debts, antenuptial, husband when liable for, 790, 793.
- separate property when liable for, 768. See *infra*, **separate property**.
- desertion of, by husband, effect of, 743, 744.
- devastavit by, 769.
- disclaimer by, of interest in land, how affected, 199, 200.
- discretionary trust, is competent to exercise, 33.
- disentailing assurance of lands of wife, 748.
- divorce of, property how affected by, 346, 785.
- dower, her right to, 733 *et seq.* See **DOWER**.
- earnings of, protected, 25.
- are her separate property, 751, 773, 788.
- divisible on death among creditors *pari passu*, 773.
- election by, 954. See **ELECTION**.
- could not make, by act *in pais*, 954.
- might by fine or consent in Court, 954, 955.
- or under Fines and Recoveries Act, 955.
- may now under recent Act, 956.

[The paging refers to the [\*] pages.]

# MARRIED WOMAN—*continued.*

- personalty, to take fund in Court as, 750.
- when restrained from anticipation, whether competent, 786.
- elegit*, estate by, in trust for *feme covert*, 747, 748.
- engagements by, 761 *et seq.* See *supra*, **contract**.
- enlargement of estate by, is not alienation, 784.
- entail in favour of, how and when barrable, 748, 780, 784.
- entireties, husband and wife taken by, 741; and see 753.
- equitable chattels real of, rights of husband in respect of, 746.
- equitable interest of, generally, 738 *et seq.*
- equity of, to settlement.**
  - antenuptial debts, is subject to, 739.
  - arrears of income, whether it attaches to, 743, 747.
  - asserted, how, 741, 749.
  - assignee of husband for value, as against, 742.
  - assignee of life estate, as against, 744.
  - none unless wife deserted at time of assignment, 744.
  - choses in action*, out of, 739.
  - equitable chattles real, out of, 746, 747.
  - equitable freeholds, out of, 748.
  - extent of, 742 *et seq.*
    - what proportion usually settled, 742; sometimes the whole, 743.
  - form of settlement, 744.
  - liberty to wife to apply for payment of capital to her, 744.
  - fraud, where she is guilty of, 739.
  - fund under £200, out of, 742.
  - husband's act alone does not effect, 748.
  - life interest of wife, out of, 744.
  - Married Women's Property Act, 1882, alteration of law effected by, 751.
  - origin of, 740.
  - outstanding term, out of lands subject to, 750.
  - personal to wife, equity is, 741 note (b).
  - possessory fund not actually distributable, out of, 741.
  - release of, out of her personal estate in possession, 23.
  - must be by her in Court, 741, 742.
  - out of possessory *choses in action* under Malins's Act, 23, 24, 741 note (f).
  - reversionary, while fund is, equity does not arise, 745.
  - survivorship, right by, distinguished, 744, 745.
  - term of, held in trust for her and forfeited by husband's felony, 821.
  - trustee in bankruptcy of husband, as against, 742.
  - trustee whether justified in paying fund into Court under Trustee Relief Act, 1002.
  - waiver of, by wife, 741, 742.
- execution against, 771, 772.
- executor of, did not take separate property *jure representationis*, 775.
- executory trust for settlement in favour of, how carried out by Court, 126.
- executrix**, assets in hands of, husband formerly could dispose of, 225; *secus* now, 225 note (b).
- she may make a will of such assets without husband's consent, 224.
- and transfer stock, 36.
- devastavit or breach of trust, liability for, 769.
- husband of, held a trustee within Trustees Acts, 1021.
- vesting order in favour of, 1015.
- where husband abroad, receiver appointed, 983.
- feoffment of estate vested in her upon condition, she might make, 34.

[The paging refers to the [\*] pages.]

**MARRIED WOMAN—continued.**

- Fines and Recoveries Act, conveyance under, operation of, 22, 35, 955.
- concurrency of husband effectual though he has assigned his interest or become bankrupt, 780.
- fraud by, 739, 784, 919, 920.
- freeholds of, rights of husband in respect to, 749 *et seq.*
- funeral expenses of, whether payable out of separate property, 773.
- gift by husband to wife, effect of, 68, 69, 755.
- to husband, by wife, of separate property when presumed, 777, 778.
- guarantee by, binds separate property, 761.
- housekeeping, not bound to contribute to, from separate property, 778.
- infant**, covenant by, to settle property, effect of, 39, 766.
- may appoint attorney, 39, 762.
- ratification of contract by, 766.
- receipt by, for accumulations of income, 579.
- Settled Land Acts, exercise of powers under, 569.
- waiver of equity to settlement cannot be made by, 742.
- insurance for benefit of, under Married Women's Property Acts, 789, 792.
- jointure to, may be made inalienable during present coverture, 758.
- judgment against, form and effect of, 770 *et seq.*, 787.
- judgment recovered by, is *chose in action*, 747, 748.
- judicial separation, effect of order for, on her property, 346, 746, 755.
- legacy to, cannot as against assignee be set off against debt of husband, 701.
- legal estate, she could not at common law pass, 34; *secus* since recent Act, 36.
- effect of getting in, in wife's equitable term, 747, 750.
- Limitations, Statute of, when beginning to run against, 761.
- whether applicable to action against separate property, 772.
- loan by, to husband, 760, 791.
- long term, enlargement of, by *feme* into fee simple, 784.
- maintenance of her children, liability for, 793.
- Married Women's Property Acts, 751 *et seq.*, 788 *et seq.* See those titles.
- mortgage term in trust for, whether assignable by husband so as to carry beneficial interest, 748.
- next friend, may now sue without, 759.
- outstanding term makes estate sufficiently equitable to entitle wife to settlement, 750.
- over payment of, restrained from anticipation, 357 note (*f*).
- payment out of Court to, on separate examination, 954, 955.
- pin money, arrears of, whether recoverable from husband, 776 note (*r*); 777, 778.
- policy of insurance, may effect, on own life or life of husband, 792.
- power, she may execute, simply collateral appendant or in gross, 33, 599.
- she may release under Fines and Recoveries Act, 455.
- when her appointment under, constitutes appointed property assets, 919 *et seq.*
- promissory note by, binds separate estate, 761, 763.
- protection order, effect of, on *choses in action*, 346, 740, 757.
- protector of settlement, she is, where legal freehold limited to her separate use, 781.
- real estate of, what estate husband has in, 748, 749.
- held in trust for sale, husband's receipt for purchase-money, 750.
- separate use in respect of, 779 *et seq.*
- receipt by, acting as trustee, 34, 36, 474.
- restraint against anticipation**, 693, 781 *et seq.*
- absolute gift followed by, 783.
- acquiescence, cannot be defeated by, 496, 919.

[The paging refers to the [\*] pages.]

**MARRIED WOMAN, restraint against anticipation—continued.**

- arrears of income, does not attach to, 787.
  - received by husband, what recoverable by wife, or her representatives, 776 *et seq.*
- breach of trust, property fettered by restraint not liable for, *semble*, 787, 919, 925, 926.
- confirmation of breach of trust precluded by, 497.
- debts before marriage, does not prevent liability for, as respects her own property settled by her, 768, 769, 772, 782.
- determination of coverture, ceases on, 782.
  - but property does not become available for payment of antecedent debts, 771, 787.
- discharged, where the clause has once attached, could not be, even by Court of equity, 785.
  - but now under Conveyancing Act, 1881, Court may dispense with, where it is for wife's benefit, 785.
- divorce, effect of, on, 784.
- election, whether *feme* restrained from anticipation is competent to make, 786.
- enlargement of estate is not alienation, 784.
- estate tail, enlargement of, into fee simple not prevented by, 784.
- executory trust, in settlement under, clause when inserted by Court, 126.
- fraud in the *feme* will not prevent its operation, 785.
- interest due but not payable is affected by, 787.
- legal estate, right of *feme* becoming discover to call for conveyance of, 383.
- marriage, upon, the clause operates during the coverture, 686, 782.
- Married Women's Property Act, 1882, how affected by, 787.
- nature and effect of, 24, 761, 762.
- origin of, 754, 781.
- over-payment of married woman, 357 note (*f*).
- perpetuity, may be void for, 98, 786.
- power of appointment, how far it affects restraint, 782, 783.
- reversionary, where interest of married woman is, 784.
- savings from income are not subject to, 774.
- solicitor, lien of, notwithstanding, 785.
- words appropriate for creation of, 781.
- reversionary interest of, 740, 745.
  - necessarily survived to her, 740, 745.
  - how affected by Married Women's Property Act, 1882, 751, 752.
- savings of wife, 773, 774, 775.
- separate property of, 753 *et seq.***
  - accumulation of income by married woman requiring husband to support her, 778.
  - acknowledgment of conveyance of, unnecessary, 760.
  - action in respect of, how to be brought, 759.
  - administration of, on *feme's* decease, 774.
  - answer as to, wife may put in separate, 760; and is bound by submission in, 759.
  - antenuptial agreement signed by husband not sufficient to create trust of fee, 57.
  - arrears of, 758, 776 *et seq.*
    - received by husband, what recoverable by wife or her representatives, 776 *et seq.*
    - where wife *non compos*, 777.
    - whether distinguishable from arrears of pin-money, 777.
  - assets, is administered as equitable, but *quære*, 773.

[The paging refers to the [\*] pages.]

**MARRIED WOMAN, separate property of—continued.**

- assignment of, good against creditors, 773.
- attachment, wife liable to, where answering separately as to separate property, 760.
- breach of trust, impounding property to answer, 911.
  - separate property when liable for, 919 *et seq.*
- contingency, whether alienable pending, 779.
- contract of wife, when binding separate property, 760 *et seq.*
  - after acquired property, as to, 762, 767.
  - appointment, does not operate by way of, 763, 764.
  - infancy, contract made during, may be ratified, 766.
    - but ratification binds only property then held by her, 766.
  - purchase, contract for, enforced, 762.
  - written contract, when necessary, 765.
- conveyance, when *c. q. t.* restrained from anticipation is entitled to call for, 686.
- corpus* expended by husband with assent of wife, treated as gift by her, 778.
- corpus*, may extend to, or to income beyond coverture, 779.
- costs out of, 643, 762.
- created by what words, 755, 756.
  - what words insufficient, 757.
  - trust must be clearly expressed, 754.
- creditors may bring action for payment out of, after *feme's* death, 773.
  - paid *pari passu* out of, 764, 773.
- courtesy of, allowed, 735 *et seq.*
  - but may be defeated by disposition by wife, 735.
- debts, before marriage, separate property when liable to, 769.
- destroyed, separate use may be, during discoverure, 758.
- election as to, married woman competent to make, 956.
- engagements of *feme* when binding on, 761 *et seq.*, 919 *et seq.* See *supra*, "contract."
- expenses of trustee, separate property of *c. q. t.* when liable to, 643.
- feme sole*, married woman considered as, as regards separate estate, 24, 759.
  - as to realty, 779.
- funeral expenses whether thrown upon, 773.
- gift of, to husband, what amounts to, 777, 778.
- husband receiving *corpus*, *prima facie* trustee for wife, 778.
  - gift by husband to wife, 68, 69, 755. \* .
- injunction against husband interfering with, 778.
- injunction to restrain her from dealing with, not granted before judgment, 772.
- inventory of, when trustee ought to make, 207.
- judgment against, form and effect of, 770, 771, 781, 803 note (c).
- legal estate, what, trustees take, where limitations for separate use, 210 *et seq.*
  - wife may direct conveyance of, after husband's death, 686.
- liabilities of *feme covert* in respect of, 760 *et seq.* See *supra*, "breach of trust;" "contract."
- life estate, her power over her, 744.
- Limitations, Statute of, whether *feme* can plead, 772.
- loan of, by wife to husband, 760, 791.
- marriage, upon, the separate use operates, 757.
  - effect of second marriage, 758; as to arrears, 758.
- Married Women's Property Act, under, 751 *et seq.*
- mortgagee of husband bound by trust for separate use, 861.
- origin of, 754.



[The paging refers to the [\*] pages.]

**MARRIED WOMAN, separate property of—continued.**

- personal estate survives to husband in marital right, 775.
- corpus* of, where alienable by wife, 779.
- possession, when *c. q. t.* entitled for separate use is entitled to, 676.
- practice as to, in proceedings in equity, 759.
- real estate settled to separate use, whether *feme* may dispose of *corpus* of, 770, 779, 780.
- she may bar entail in, 780.
- receiver of, at instance of creditor, 771.
- reviver of separate use upon subsequent marriage, 758.
- savings out of, belong exclusively to wife, 773.
- invested in purchase of land, devolve on heir, 775.
- out of household monies belong to husband, 774.
- separate use, destruction, suspension, and reviver of, 757, 758.
- devise for, does not pass trust estate of testator, 228.
- trust for, whether a use within Statute of Uses, 210.
- where life estate for, rule in *Shelly's Case* not applicable, 119.
- words necessary for creation of, 755 *et seq.*
- sequestered, may be, for disobedience to order of Court, 760.
- settlement of accounts in respect of, 759.
- statutory. See MARRIED WOMEN'S PROPERTY ACTS.
- submission in pleading in respect of, wife bound by, 759.
- suspension of separate use on death of husband, 758.
- trespass against, right of married woman to sue for, 778.
- trustee for, allowing husband to get possession, liability of, 902.
- trustee of, not necessary, 754, 755; but husband is construed to be trustee, 754, 834.
- trustees with discretion to apply for maintenance of, may pay to her for separate use, 757.
- undisposed of, survives to husband, 774, 775.
- will, *feme covert* may dispose of separate estate and accumulations by, 774, 775.
- separated from husband, moneys advanced to, for necessities, 768.
- set-off of debt of husband against her assignee, 701.
- Settled Land Acts, exercise of powers of, by married woman, 569.
- settlement by, fraudulently obtained, will be set aside, 759.
- solicitor, she may retain, 761, 762, 785.
- stock, registration of, in name of *feme* 788, 792.
- transfer of, by married woman being trustee, 36.
- survivorship, her right by, cannot be defeated by assignment to husband of prior life interest, 744, 745.
- cases as to, have a bearing since Married Women's Property Act, 1882, 751.
- term of years belonging to, rights of husband in respect to, 746, 747, 748.
- tort, she may sue in respect of, under recent Act, 761, 769.
- but husband and wife cannot sue each other, 761.
- she could not strictly speaking commit, 769; *secus* now, 769.
- trade, may carry on, separately from her husband, 788.
- trespass, action for, by wife against husband or stranger, 778.
- trust, power of married woman to create, 22, 23.
- as to real estate, formalities formerly requisite, 22.
- since Married Women's Property Act, 1882, 23.
- trustee, may be, but not advisable to select her, 33.
- concurrence of husband formerly necessary, 34; but not now, 34, 36.
- power of Court to dispense with, 35.
- husband of, is trustee within Trustee Acts, 1012, 1015.
- receipts, whether she could sign, 34.
- she can now under Married Women's Property Act, 1882, 36.

[The paging refers to the [\*] pages.]

**MARRIED WOMEN—continued.**

- sale, may exercise discretion as to, 34.
- stock, may transfer as though *feme sole*, 36.
- wages and earnings of, protected, 25.
- are her separate property, 751, 773, 788.
- widow, payment of small sums to, without taking out administration, 354.
- will of, 751, 753, 774, 775, 776, 949.

**MARRIED WOMEN'S PROPERTY ACT, 1870, 788 *et seq.***

- insurance under, for benefit of wife and children, 789.
- real estate descended on married woman, 25, 789.
- repealed by Married Women's Property Act, 1882, 25, 791.
- restraint on anticipation, separate property liable for antenuptial debts notwithstanding, 768.
- wages and earnings of married woman, protection of, 25, 788.

**MARRIED WOMEN'S PROPERTY ACT, 1874, 790, 791.**

**MARRIED WOMEN'S PROPERTY ACT, 1882, 751 *et seq.*, 791 *et seq.* See**

**MARRIED WOMAN.**

- action by married woman, 760, 761.
- contract by married woman, effect of, 762, 765, 767.
- curtesy, right of husband to, out of wife's separate property, 736.
- debts, liability of husband for, 793.
- disclaimer by married woman, whether authorized by Act, 200.
- general power, execution of, by will, effect of, 922.
- gift by husband to wife, valid, 69; exception as against creditors, *ib.*
- insurance under, for benefit of wife and children, 792.
- mother, liability of, for maintenance of children, 793.
- ratification by infant *feme covert*, 39.
- restraint against anticipation not rendered inoperative by, 787.
- separate property liable for antenuptial debts notwithstanding, 787.
- rights of husband in wife's property, how far excluded by, 751 *et seq.*, 791 *et seq.*
- as to property of wife, the title to which accrued before commencement of Act, *quære*, 751, 752.
- after death of wife, rights of husband not excluded, *semble*, 752.
- trust, married woman can create, without consent of husband, 23, 24.
- and execute trust, pass estate, and sign good receipt, 34, 36.
- wages and earnings of married woman are her separate property, 751, 773.
- will, power of married woman to dispose of property by, 753, 776 note (a), 922.

**MARSHALLING SECURITIES, 719, 720.**

- right of judgment creditors to marshal *inter se*, 719 note (f).

**MAYOR.**

- profit, cannot make, by his office, 279.

**MEETING HOUSE.**

- trust for, 534, 535. See CHAPEL.

**MERGER. Chap. XXVII., sect. 4, 726—733.**

- charge, of, on purchase of estate, 726 *et seq.*
- by owner of charge and estate mortgaging estate, 732.
- payment of charge and subsequent acquisition of fee, 732.
- purchaser, to prejudice of, how avoided, 727.
- contingency, may be made to depend on, 727.
- contingent remainders not destroyed by, 121, 383.
- debt, of, in judgment, 909.
- doctrine of, in equity, 726; prevails now, over legal doctrine, 733.
- equitable estate, of, in legal estate, 14.
- only where estates co-extensive and commensurate, 14.
- inheritance, whether the charge can be made to attend the, 732, 733.

[The paging refers to the [\*] pages.]

**MERGER**—*continued*.

- intention, is question of, in equity, 726 *et seq.*
- parol evidence of, admissible, 729.
- mistake by person paying off charge, 732.
- notice, materiality of, in equity, 726, 727.
- presumption of, when it arises, 730 *et seq.*
- where tenant in fee, in tail, or for life pays off charge, 730, 731.
- purchaser paying off charge pending contract, 727.
- trustee, assignment to, not necessary to prevent merger, 727.
- not sufficient to exclude presumption of merger, 731.

**MERITORIOUS CONSIDERATION.** See **CONSIDERATION**.

**MESNE RENTS AND PROFITS.** See **RENTS AND PROFITS**.

**METROPOLITAN BOARD OF WORKS STOCK.**

- investment in, 316.

**MINES AND MINERALS.**

- account of profits of, may be sought in equity on legal title, 886.
- acquiescence when a bar to remedy of *c. q. l.*, in respect of renewed lease, 186.
- lease of, by tenant for life, 503, 555, 682, 683.
- by trustee, 595.
- portion, when to be raised out of produce of, 418, 420.
- purchase of, under powers of Settled Land Acts, 563.
- sale of surface apart from, 432, 433.
- or of minerals apart from surface, 433
- tenant for life, powers of, to work, under Settled Land Act, 190.
- to sell, 433; to lease, 555, 682, 683.
- trustees not justified in purchasing mining property, 503.
- selling under power cannot reserve minerals, 432, 433.
- except with previous sanction of Court, 433.
- working of mines on land of infant may be continued by, 578.
- waste by working, improperly, 190. See **WASTE**.

**MINISTER.**

- chapel, of, 534, 535. See **CHAPEL**.

**MINISTERIAL TRUST.**

- meaning of term explained, 18.

**MISAPPLICATION.** See **BREACH OF TRUST**.

**MISCONDUCT OF TRUSTEES.** See **BREACH OF TRUST**.

- cestui que trust* not prejudiced by, 938, 939, 963.
- costs, trustee when deprived of, or made to pay, 636, 847, 986, 990 *et seq.*
- See **COSTS**.
- loss occasioned by, must be borne by trustee, 907.
- receiver, when Court will appoint, on misconduct of trustee, 982.
- removal of trustee on ground of, 846, 847, 1028.
- costs, trustee when ordered to pay, 847, 848.

**MISDEMEANOUR.**

- fraud of trustees is a, 898.
- outlawry for, effect of, 28, 250.

**MISREPRESENTATION.** See **FRAUD**.

- account of rents and profits, where plaintiff kept out of estate by misrepresentation, 891.
- trustee, liability of, for making, as to accounts, 993.
- to purchaser of equitable interest, 704.

**MISTAKE.**

- account of mesne rents and profits in cases of, 887 *et seq.*
- against trustees for charities refused on ground of mistake, 934, 936.
- legal title, account upon, granted in equity on ground of mistake, 887.

[The paging refers to the [\*] pages.]

### MISTAKE—*continued*.

- breach of trust when excused by, 349, 900, 907, 934.
- building on land of another by mistake, effect of, 716, 717.
- election of recipients of charity not set aside on ground of, 535.
- encouragement of, by legal owner of property, when equivalent to fraud, 717.
- grantee not permitted to take advantage of mistake by grantor, 145.
- law, of, whether ground for relief in equity, 497, 498.
- Limitations, Statutes of, mistake does not prevent, from running in equity, 866.
- merger not presumed in case of mistake, 732.
- non-entry on cesser of lease for lives by mistake, 887.
- notice of assignment, in giving, when fatal, 710.
- overpayment by, 356.
- payment by, trustee making, not charged with interest, 349.
- presumption of release rebutted by, 870.
- recital in trust deed, in, trustee whether affected by, 201.
- rectification of settlement on ground of, 114.
- trust when supported on ground of, 65.
- trustee, by, as to rights of parties is at his own expense, 344.
  - charitable trustee not made to account, 872, 934, 936.
  - costs of trustee who has occasioned suit by innocent mistake, 991, 992.
  - investing in bank stock instead of bank annuities, 307.
  - person assuming office of trustee accountable as such, 207, 208.
  - when an excuse for non-investment, &c., of trust funds, 339, 344.
  - where no wilful default, not a ground for his removal, 849.
- voluntary settlement executed under, may be set aside, 75, 145.

### MIXING TRUST FUNDS.

- trustee mixing trust funds with own money, effect of, 297, 298, 893, 894, 895.
- cestui que trust must prove in bankruptcy of trustee, 241.
- trustee should not mix trust fund with rights of strangers, 331, 642.

### MIXTURE OF TRUST AND POWER.

- distinguished from trust with power annexed, 19 ; and see 600, 836.

### MONEY.

- at home, 944, 946.
- attachment of trust debt, 245.
- bills and notes, distinction between, and money, 892.
  - co-trustee should not permit, to be in hands of co-trustee, 265.
- deposited, may be, in bank to trust account, 295.
- ear-marked, when, 240, 892, 893.
- followed in equity, where, 240, 892 *et seq.*
  - into land even by parol, 896.
  - mixed with trustees' money, 893.
  - paid into bank on account of trustee, 894.
- land, money to be laid out in, treated as land, 943 *et seq.* See **CONVERSION**.
  - cestui que trust may elect to take it as money, 690. See **ELECTION**.
  - results, on failure of purpose, to next of kin, 152, 153.
- legacy of, not deemed by subsequent settlement of land, 404.
- notice in lieu of distingas is applicable to, 974.
- payment of trust money into bank, must be to account of trust, 256. See **BANK**.
- scrivener, now obsolete, 82.
- single trustee, whether it may be paid to, 355 *et seq.*
- transmission of trust money, how to be affected, 256.
- trust to raise money is a special trust, 210.
  - and confers fee simple upon trustee, 217.

[The paging refers to the [\*] pages.]

## MORTGAGE.

- agreement to give, for past debt, whether enforceable, 515 note (b).
- assets may be left outstanding on, by executor, 326.
- assets, of, by executor, 477 *et seq.*
- calling in, clause against, should not be inserted in mortgage by trustees, 331, 332.
- inquiry directed as to propriety of, 300 note (d).
- cautions in lending on, what trustees should observe, 324, 325.
- charge of debts or legacies, to give effect to, 467, 468. See SALE.
- consolidation of, 330.
- whether trustee bound to enforce, 593, 594.
- copyholds, whether trustees should lend on mortgage of, 328.
- costs, dower trustee of mortgagor not entitled to, against mortgagee, 985.
- discharge of, by trustee of settled estate, 594.
- equitable**, assignee of, bound by equities affecting assignor, 696.
- executor, by, of assets, 477.
- husband, by, of wife's lands, 750.
- lands in Scotland, of, 48.
- overrides subsequent judgment, 246 note (f).
- priority of, where title deeds improperly dealt with by legal owner, 715, 862.
- purchaser affected with notice of, is bound thereby, 858.
- trustee, by, in breach of duty inoperative as against *c. q. t.* 862.
- trustee should not invest on, 331.
- vendor's lien postponed to, 714.
- executor**, by, of personal estate, 477 *et seq.*
- with or without power of sale, 477.
- of real estate, charged with debts or legacies, 467, 468, 470.
- finances on renewal of lease, to raise, 367, 368, 370, 371.
- foreclosure decree, vesting order to give effect to, 1016, 1026.
- foreign lands, of, jurisdiction to order foreclosure, 49.
- forged by solicitor, trustee lending money on, held liable, 353.
- husband, by, of wife's chattel real, 746, 747.
- infant's realty, of, whether relieved by his personality, 968.
- investment on, by trustees**, 312, 323 *et seq.* See INVESTMENT, **real securities**.
- charity, of accumulation and other monies of, 541, 542.
- conversion of, by executor or trustee, when to be made, 291.
- Court, formerly not ordered by, 313; *secus* now, 308.
- power of trustees to make, 308, 312.
- release of part of security by trustee, 593.
- statutory powers of trustees as to, 308, 312.
- trust how kept out of sight on mortgage or transfer, 332, 333.
- where disclosed, 333.
- valuation of security, duty of trustees as to, 324, 499.
- what proportion of value trustees may advance, 325, 328.
- joint account clause in mortgage by trustees**, 332.
- judgment creditor** may redeem, 797, 800, 813, 816.
- right of, against entirety of equity of redemption, 800.
- against surplus proceeds under power of sale, 799.
- to tack, 800.
- lands abroad, jurisdiction to order foreclosure of, 49.
- lapse of time, equity of redemption when barred by, 866.
- leaseholds, whether trustees should lend on mortgage of, 327, 328.
- legal estate when passing under general devise by mortgagee, 228, 229.
- lunatic's realty, of, not discharged out of personality, 966.
- reconveyance of, how to be made, 966.
- money, trust of, may be by parol, 54.

[The paging refers to the [\*] pages.]

# MORTGAGE—continued.

- new trustee, vesting of mortgage in, 652, 654.
- policy, of, implies power to give receipts, 453.
- portion, to raise, 413, 418 *et seq.*
- power of sale in—
  - assigns, who are within meaning of, 431, 603.
  - concurrence of mortgagor not required to exercise of, 447.
  - improper exercise of, injunction to restrain, 435, 855.
  - statutory under 23 & 24 Vict. c. 145, 431; under 44 & 45 Vict. c. 41, s. 19, 331 note (c) 431, 432.
  - surplus under, is personalty or realty of mortgagor according as sale
    - takes place before or after his death, 952.
  - whether bound by judgment against mortgagor, 799.
- survives when the advance is joint, 431.
- tender of principal and interest, may not be exercised after, 855 note (c).
- trustees should insist on insertion of, in mortgage to them, 331.
- whether authorized by power to mortgage, 426, 427.
  - whether by power to raise money by sale or mortgage, 426, 427.
- priority of, how affected by notice, 704 *et seq.*
  - by improper dealing with title deeds, 715.
- realization of, by executor or trustee, when necessary, 291.
- reconvey, by what description mortgagee should, 685.
- reconveyance, lunatic's property, of, how to be made, 966.
- vesting order in lieu of, 1019.
- release of part of security, whether trustees may make, 593.
- renewal of lease, to raise fines payable on, 367, 368, 370, 371.
- sale by trustee to pay off, 594.
- second, trustees should not invest on, 330.
- solicitor of mortgagor buying up, injunction to restrain sale by, 856.
- stock mortgage, whether trustees should lend on, 323, 324.
- stock, trustees may transfer, to mortgagor, 573, 574.
- tacking securities to legal estate, 330, 800.
- tenancy in common implied in equity on advance by several, 164.
- tenant for life, by, under Settled Land Acts, 557, 558.
- term of years, for long, why formerly preferred, 328.
- transfer of, by mortgagees being trustees to new trustees, how framed, 332, 333.
- trust for sale, by way of, is not express trust within Statutes of Limitation, 880.
- trust for sale, distinguished from, 952, 953.
- trust how kept out of sight on mortgage or transfer by trustees, 332, 333.
- trust to, will not authorize sale, 426; survives, 430.
  - to sell, whether it authorizes mortgage, 425, 426.
- whether mortgage included in word trust under Trustee Act, 1012, 1017.
- trustees, whether they may invest on, without a power, 312.
- trustees, to, by one of themselves not allowed, 325.
- wilful default, plaintiff in redemption action need not allege, 905.

# MORTGAGEE.

- charge, may not, for time and trouble, 628, 632.
- charge, whether he may buy in, for his own benefit, 727.
- constructive trust, bound by notice of, 858, 861.
- covenant for title by, 442.
- disability of, how remedied, 1014 *et seq.* See TRUSTEE ACTS.
- equity of redemption, mortgagee buying, may keep his charge on foot as against intervening incumbrancers, 727.
- vested in mortgagee on death of mortgagor intestate without heirs, 283, 823.
- secus* now under Intestates Estates Act, 1884, *ib.*

[The paging refers to the [\*] pages.]

**MORTGAGEE**—*continued.*

- executor of, may call on heir to convey, 943.
- heir, of, whether bound by title of residuary legatee, 861.
- infant, vesting order as to interest of 1014 *et seq.*
- injunction against, to restrain improper sale, 435, 855.
- insurance, cannot expend money for, in absence of stipulation, 580 ; but see note (a).
- judgment against, effect of, 805.
- legal estate in, vests on death in legal personal representative, 229.
- Limitations, Statute of, when beginning to run in favour of, 866.
- lunatic, vesting order as to interest of, 1014 *et seq.*
- notice to, of subsequent incumbrance, effect of, 345.
- possession, mortgagee in, how far constructively a trustee of rents and profits, 190, 191.
- power of sale, mortgagee not a constructive trustee of, 190.
- proof by, in administration, bankruptcy or under creditors' deed, 521.
- purchase by, from mortgagor, upheld, 277, 490.
- merger of charge how obviated in case of, 727.
- receipts, power of mortgagee to give, 431.
- renewal of lease by, effect of, 181, 183.
- rents and profits, accountability of mortgagee in possession for, 190.
- sale by, 431, 447.
- good, though part of purchase-money remain on mortgage, 431.
- separate use, trust for, binds mortgagee of husband, 861.
- title deeds, what conduct in relation to, will postpone legal mortgagee, 715.
- transfer by mortgagee in possession, effect of, 191.
- trust, notice of, when affected with, 861, 878.
- trustee, in what sense mortgagee is, for himself and his executors, 15.
- or as respects purchase of equity of redemption, 277.
- or for mortgagor, 880.
- vesting order as to estate of, power to make, 1019, 1020.

**MORTGAGOR.**

- death of, intestate and without heirs, effect of, 283, 823.
- heir of, might formerly require exoneration out of personalty, 943:
- judgment against, effect of, 800, 801, 805, 813, 814. See JUDGMENT.
- notice of trust, having, should see to application of trust money, 344.
- purchasing under power of sale in first mortgage lets in subsequent incumbrancers, 728.
- rents, is not accountable for, until notice from mortgagee, 345.
- surplus proceeds of sale whether personalty or realty of, 952.

**MORTMAIN.**

- accumulations from charity estate, investment of, 541.
- in purchase of land, 541; on mortgage, 541.
- Act merely prescribes mode of alienation, does not prohibit it, 46.
- charity, trust of land for, what formalities required for creating, 96.
- how varied by recent acts, 96.
- devise upon trust to sell and pay *part* of proceeds to charity, effect of, 148 note (e).
- enrolment of conveyance under 9 Geo. 2, c. 36 . . 96, 97, 541, 699, 670.
- exemptions from, 97.
- buildings for religious or literary societies, 97.
- parks, schools and museums, 97.
- recreation grounds, 97.
- legacy to charity charged on realty, 155 *et seq.*
- licence in, for conveyance to corporation upon trust, 32.
- not required on re-investment of charity funds, 540, 541.
- mortgage by charity trustees not avoided by 9 Geo. 2, c. 36, 541.
- † 30 LAW OF TRUSTS.

[The paging refers to the [\*] pages.]

**MORTMAIN**—*continued*.

- partner, interest of, in proceeds of realty is within statute, 148 note (c).
- requirements of statute of, 96, 541.
- secret trust for charity, discovery by devisee, 63, 64.
- trust whether void at law or only in equity, 65.
- trusts originated by desire to evade statutes of, 1.

**MOTHER.**

- doctrine of advancement applies to, 178.
- liability of, for maintenance of her children, 793.

**MOTION.**

- discharge of trustee, for, 672.
- foreclosure absolute, to make, whether Court will declare mortgagor trustee for mortgagee, 1026.
- payment into Court, for, 976, 977. See PAYMENT INTO COURT.
- Romilly's Act, proceedings under, subsequent to petition may be by, 931.

**MOVABLES.**

- governed by *lex domicilii*, 48.

**MULTIPLICATION OF CHARGES, 852.**

**MUNICIPAL CORPORATION.** See CORPORATION.

**MUNICIPAL CORPORATIONS ACT (5 & 6 W. 4. c. 76.)**

- alienation by corporations, only with consent of Lords of Treasury, 31.
- charity, appointment of trustees for, in place of corporation, 851.

**MUNICIPAL CORPORATIONS ACT, 1882, 852.**

**MURDER.**

- escheat and forfeiture on conviction or attainder for, 27, 28, 284.

**NATIONAL DEBT COMMISSIONERS.**

- trust, not affected by notice of, 32.

**NATURALIZATION ACT, 1870, 27.**

**NAVY 5 PER CENTS.**

- investment in, 334.

**NE EXEAT.**

- writ of, against trustee, 900.

**NEGLIGENCE.**

- agent, of, trustee whether liable for, 638.
- breach of trust by reason of, 902 *et seq.* See BREACH OF TRUST.
- calling in trust estate, as to, 287 *et seq.*
- costs of trustee in case of, 989.
- investment, in making, 306 *et seq.*
- legal proceedings caused by, trustee liable for costs of, 546, 636, 637.
- premiums, to pay, 903.
- reimbursement, right of trustee to, lost by negligence, 638.
- transfer, to enforce, 902, 903.
- trustee, of, rights of *c. q. t.* not prejudiced by, 938, 939, 963.

**NEGOTIABLE INSTRUMENT, 241.**

**NEPHEW.**

- advancement for, presumed, 177.

**NEW BUILDINGS.**

- erection of, equivalent to purchase of lands, 504.

**NEW SHARES.**

- trustees cannot accept, unless expressly authorized, 596.

**NEW TRUST.**

- created without intervention of new trustee, 73.



[The paging refers to the [\*] pages.]

**NEW TRUSTEES**, Chap. xxv., 645—673.

abroad, in place of trustee permanently residing, 847, 1016, 1033.

absconding trustee, in place of, 847, 1033.

action for appointment of, whether *c. q. t.* should bring, 1030.

appointed by Court, powers of, 608.

could not formerly exercise arbitrary powers, 608.

will not be empowered to appoint new trustees, 849.

appointment of new trustee in place of, 646 note (a).

appointment of, by Court, 846 *et seq.*

application for, when to be made at chambers, 848.

cestui que trust when entitled to, 846, 847.

costs of, 669, 847, 868. See *infra*, **costs**.

principles on which Court acts in selecting, 850.

Trustee Act and Trustee Extension Act, under, 853, 1027, 1028, 1043, 1044. See *infra*, **Trustee Acts**.

under power, 655 *et seq.* See *infra*, **power**.

when complete, 650.

Bankruptcy Act, appointment under, 850, 1027, 1028.

bankruptcy of trustee a ground for appointing, 658, 847 and note (e), 850, 1027, 1028.

breach of trust, trustee should not retire in favour of one who intends to commit, 668.

trustee permitting co-trustee to commit, removed, 847.

caprice of *c. q. t.*, appointment not governed by, 837, 849.

**cestui que trust** not usually appointed, 41.

right of, to appointment of new trustees, 846.

where interest of *c. q. t.* reversionary, 846.

where trustee dies in testator's lifetime, 846.

chapel, meeting house, &c., of, how appointed, 852.

where trustees entertain opinions contrary to founder's intention, 847.

**charitable trusts**, appointment of new trustee, to act in, 850 *et seq.* See **CHARITY**.

requires sanction of Charity Commissioners, 852.

where corporation are trustees, 851.

where deed of endowment does not provide for appointment of, 852, 853.

Charitable Trusts Act, appointment of new trustees under, 852.

chattels real how vested in, 650, 651.

consent by, to act, how evidenced, 1030.

Conveyancing Act, 1881, appointment of new trustees under, 648, 652.

conviction of existing trustee for felony, a ground for appointing, 1043, 1044.

copyholds, of, fine when payable on admission of, 235, 1025.

**costs of appointment of.**

*corpus*, are payable out of, 669.

improper appointment, 618, 665, 669.

remainderman, when thrown upon, 1029.

tenant for life often pays, where there is no fund, 669.

trustee removed for misconduct, in lieu of, 847, 848.

death of existing trustee when a ground for appointing, 846, 847.

expedient to appoint, when Court considers it to be, 1027 *et seq.*

felony, conviction of trustee for, a ground for appointing, 1043, 1044,

fitness of, Court how satisfied as to, 1030, 1031.

evidence as to, when required, 1028.

husband of *c. q. t.* sometimes appointed, 41.

not appointed trustee of own marriage settlement, 41.

impartial, exercises of powers should be, 668.

ineffectual appointment of, effect of, 669; powers of old trustees remain, *ib.*

[The paging refers to the [\*] pages.]

# NEW TRUSTEES—continued.

infant, in place of, 1027.

inquiries to be made by, before accepting office, 207, 670, 706.

irregularity in appointment of existing trustee, when a ground for appointing, 848.

not when a long time has elapsed, 848, 849.

jurisdiction, person to be appointed should be within the, 662.

legal estate, transfer of, to new trustee, 650 *et seq.* See *infra*, **vesting property**.

*lis pendens*, after decree in, trustee should not exercise power without sanction of Court, 617, 669.

Lord Cranworth's Act, appointment of new trustees under, 647, 648

lunacy, order may be made in, for appointment of new trustees, 1014, 1029. without being made in Chancery, when, 1029.

lunatic, in place of, when appointed, 1015 note (a), 1028 note (b).

misconduct of existing trustee, when a ground for appointing, 847, 848.

misunderstanding of duty by existing trustee a ground for appointing, 849.

motion, application by, for discharge of trustee, 672.

Municipal Corporations Act, appointment of new trustees under, 851.

no existing trustee, where there is, appointment of trustee to act, 846.

**number to be appointed**, 659 *et seq.*

Conveyancing Act, 1881, under powers of, 648, 659, 663, 664.

directory power, under, 667.

one in place of several, appointment of, improper, 659, 662.

cases in which such appointment has been supported, 660.

one of two trustees retiring, appointment of co-trustee to be sole trustee improper, 662.

one retiring, could not appoint two successors, 659; unless authorized, 659; *secus* now, 659.

original number, whether to be kept up, 661 *et seq.*, 667, 846.

Court does not limit itself to, 661, 662.

several in place of one, appointment of, when proper, 659, 660, 664.

two trustees retiring, appointment of single successor improper, 662.

where no new trustee can be found, 671.

persons proper for office of—

cestui que trust or near relative undesirable, 665, *c. q. t.* sometimes appointed by Court, 666.

donee of power, whether he can appoint himself, 666.

jurisdiction, should be within, 662.

petition for appointment of, proceedings on, 1030 *et seq.*

where action pending, 672, 1034.

policy of assurance, of, effected under Married Women's Property Act, 1882, 792.

**power to appoint—**

administration action, how affected by pendency of, 617, 618, 669.

construction of, in various cases—

“acting” trustee, who is, 655, 656, 665.

“continuing” trustee, 658, 664.

departing the United Kingdom, 659; does not include temporary absence, 659.

“executors,” how to be exercised by, 656, 657.

“incapable to act,” meaning of, 658.

does not extend to bankruptcy, 658; or residence abroad, 658.

“other trustees,” meaning of, 665.

“refusing” or “declining,” meaning of, 647, 656.

includes disclaiming, 656; and retiring after having acted, 656.

payment into Court under Trustee Relief Act is equivalent to, 656.

[The paging refers to the [\*] pages.]

**NEW TRUSTEES, power to appoint—continued.**

- “retiring” trustee or trustee “desirous of being discharged,” 999.
- “said trustees,” meaning of, 665.
- “survivor,” “surviving trustee,” 655 *et seq.*, 662, 664.
- “unfit,” meaning of, 658; extends to bankruptcy, 658.
- when number reduced to three, 600.
- Conveyancing Act, 1881, under, 648.
- application of, to previous settlements, 648, 649.
- form of, usual form and suggested additions, 646, 647.
- where several sets of trustees, 647.
- jurisdiction of Court to extinguish or vary, on decreeing dissolution of marriage, 670.
- mode of appointing under, 664 *et seq.*
  - where power to surviving or continuing trustees, and both or survivor retire, two appointments usual, 664.
  - secus* where power to surviving, continuing or other trustee, 665.
  - \* trustee surviving testator may appoint new trustee in place of one who predeceased testator, 657.
- statutory powers, 647 *et seq.*, 850 *et seq.*
- trustee appointed by Court, not given to, 849.
- trustee retiring should see that power contemplates precise case, 654.
- should not part with fund before complete appointment of successor, 654, 655.
- where there are more than two trustees, *secus* now under Conveyancing Act, 653, 654.
- vesting trust estate in new trustee, 650 *et seq.* See *infra*, **vesting property in new trustee.**
- when Court will insert, in settlement under executory trust, 127, 128.
- powers of new trustees—
  - appointed by Court, 608.
  - appointed under power, 670.
- reappointment of, for purpose of making vesting order, 1028.
- rectification of invalid appointment of, 663.
- refusal to act by existing trustee, a ground for appointing, 847.
- to transfer to new trustees, 655.
- relative of *c. q. t.* objected to, 666.
- religious opinions of trustee for charity, when regarded, 42.
- residence abroad of existing trustee, a ground for appointing, 646, 649.
- several trusts, of, when separate trustees may be appointed, 666, 667, 1030
- note,
- stamp on appointment of, 653.
- semble* double duty payable on appointment by deed, and transfer, 653.
- statutory powers for appointment of, 647 *et seq.*, 850 *et seq.*
- surviving trustee, right of, to call for appointment of new trustee, 346.
- transfer of trust property to, 650 *et seq.*, 1014 *et seq.* See *infra*, **vesting property.**
- whether new trustee is actually such prior to transfer, 649, 650.
- Trustee Acts**, appointment of new trustees under, 853, 1027, 1028, 1043, 1044.
- application for, how to be made, 1033.
- consent to act, how to be given, 1030 note.
- costs of application for, 1038 note.
- evidence in support of petition for, 1021, 1028, 1030, 1031, 1033.
- parties to application for, 1032, 1033.
- petition for amendment of, 1033.
- dismissing, 1034.
- proceedings on, 1033 *et seq.*
- vesting order on, 1031. See *infra*, **vesting.**

[The paging refers to the [\*] pages.]

# NEW TRUSTEES—*continued.*

## vesting property in new trustee—

- bank annuities, 650.
- charity, legal estate vested in trustees for, without conveyance, 851.
- chattels real, 650, 651.
- copyholds, 652, 654.
- mode of, upon appointment of trustees under power, 650 *et seq.*
  - upon appointment by Court, 1014 *et seq.* See TRUSTEE ACTS,
- money in funds, &c., 650, 652, 1014 *et seq.*
- mortgage securities, 652, 654, 1014 *et seq.*
- two deeds when necessary, 650 *et seq.*
- vesting order does not affect liability of old trustees, 1032.

# NEXT OF KIN.

- cestui que trust dying intestate without leaving, 285.
- charge, keeping on foot, for benefit of next of kin, 729 note (e).
- conversion directed by will not construed to confer any right on, 150, 953.
- covenant to convey land on trust for sale, when entitled to benefit of, 949, 950.
- executor denying relationship of, ordered to pay costs, 994.
- executor when trustee for, 60, 61, 285.
- followed, trust money may be, into hands of, 906.
- land to be converted into money, next of kin not entitled where land "at home," 949, 950.
- Limitations, Statutes of, when barred by, 885.
- lunatic, of, interests of, how far regarded by Court, 963 *et seq.* See LUNATIC.
- money to be laid out in land, next of kin entitled to undisposed of interest in, 152. See RESULTING TRUST.
- nearest of kin, "next of kin" construed as equivalent to, 844.
- personæ designatæ*, when they may claim as, 953.
- personalty given upon trust to be afterwards declared, next of kin entitled to, 60.
- proceeds of sale of land, next of kin not entitled to undisposed of, 150, 160.
  - even where it is directed that proceeds shall be personal estate, 150.
- refusal by, to take out administration, 1023.
- residuary gift, where will contains, no resulting trust for next of kin, 160.
  - unless part of personal estate is expressly excepted from residue, 160.
- trustee, of, where sale of land set aside, whether entitled to money, 494, 495.

# NOTES (BANK).

- may be followed in equity, 892. See BANK.

# NOTICE.

- army agent, to, of charge on proceeds of officer's commission, 708.
- assignment, of, when necessary, 701 *et seq.*, 903.
  - debt, on assignment of, 697.
  - equitable interest, on assignment of, 74, 246, 345, 702.
    - precautions to be taken on, 704.
  - to person whose interest it is to suppress assignment, ineffectual, 707, 709.
- bond, by assignee of, to obligor, 698.
- borrower, how affected by, where loan improper, 862.
- breach of trust, of, effect of, 862, 897, 901, 913, 923.
- cestui que trust, to, of intention to do particular act, 573.
- chose in action*, on assignment of, 702, effect of, *ib.*
  - neglect to give, liability of trustee for, 903, 904.
- company, to, what sufficient, 709, 710.
- constructive, *c. q. t.*, to, of breach of trust not a bar to relief, 923.
  - solicitor of trustee, notice to, not notice to trustee, 709.
- corporation, too, not readily presumed, 936.

[The paging refers to the [\*] pages.]

**NOTICE**—*continued.*

- debt, on assignment of, 697.
- distringas, in lieu of, practice as to obtaining, 973 *et seq.*
- equitable interest, on assignment of, 74, 702; effect of, 74, 345, 702.
  - as against settlor immaterial, 74, 246 note (f).
  - as against purchasers material, 74, 246 note (f).
- executory trust, of, 860.
- form of, should be clear and distinct, 710.
- fund in Court, on assignment of, 711, 712. See STOP ORDER.
- implied against volunteer, 16, 857.
- incumbrance of, to prior mortgagee, effect of, 345.
- insurance office, to, what sufficient, 709, 710.
- judgment of, when material as against purchaser, 863, 810, 811, 816.
  - immaterial as between judgment creditors, 816.
- lease, of, presumed from recital of surrender, 185.
- Limitations, Statutes of, cannot be set up by person having notice of trust, 867.
- marriage articles of, how far binding on purchaser, 860, 861.
- merger, equitable, how affected by, 726 *et seq.*
- mistake, when vitiated by, 710.
- parol, by, must be explicit, 710.
- policy of assurance, of assignment of, 903.
- priority by giving**, 702 *et seq.*
  - assignees of *choses in action*, as between, 74, 246 note (f), 702.
  - doctrine of, whether applicable to real estate, 704 705.
  - trustee in bankruptcy, as against, 702.
    - not where debt recoverable at law by bankrupt, *semble*, 702.
- production of documents by person bound by notice of trust, 976.
- purchaser, to, of breach of trust, 423, 424, 457, 459, 858 *et seq.*
- purchaser with or without, 858 *et seq.* See PURCHASER.
- railway shares, on transfer of, 705 note (a).
- real estate, doctrine of notice how far applicable to, 704, 705.
- recitals, presumed from, when, 185.
- shares in company, on assignment of, 709, 859.
- solicitor having lien on documents not bound to give, 703.
- solicitor, implied notice from both parties employing same, 337.
  - trustee, of, notice to, not notice to trustee, 709.
- trust, of, to vendor, practice of conveyancers as to giving, 505, 506.
- trustee, by, when necessary to be given, 710.
  - equitable interest, trustee of, should give notice to holder of legal estate, 703.
  - where assignor or assignee holds on trust, 706.
- trustee, to**, 344, 701 *et seq.*
  - assignment, of, effect of, 345.
    - not necessary to complete assignment as between assignor and assignee, 701.
    - but necessary to make trustee liable who pays under original title, 702.
  - fund in Court, where trust funds consist of, 711, 712.
  - mortgage, of, effect of, 345.
- one of several trustees, notice to, is good during his life, 706.
  - but not after his death, nor where trustee is assignor, 707.
- paramount title, notice by holder of, 285.
- person about to become trustee, notice to, 708.
- Settled Land Acts, of intention to exercise powers of, 557 *et seq.*
- shares in company, where trust fund consists of, 709.
- time of giving, 707.
- trustee receiving, not bound to communicate notice of own incumbrance, 707.

[The paging refers to the [\*] pages.]

**NOTICE**—*continued*.

- written or unwritten, whether to be, 709, 713.
- voluntary assignment of equitable interest, notice whether requisite on, 74, 708.
- volunteer, notice of trust presumed against, 16, 857.
- want of, is not a defect in title, 707.
- will, of, purchaser not prejudiced by, 478,

**NUMBER OF TRUSTEES**, 43, 659 *et seq.* See **NEW TRUSTEES**.

- Conveyancing Act, 1881, provisions of, as to, 648, 659, 663, 664.
- four only allowed of bank annuities, 43; except in special cases, 43.
- original, whether to be kept up, 661 *et seq.*, 667, 846, 1029, 1030.

**OCCUPATION RENT**.

- trustee charged with, 491.

**OFFICE OF TRUSTEE**, Chap. XIII., 251—286.

- acceptance of, effect of, 251. See **ACCEPTANCE OF TRUST**.
- co-trustees, not liable for each other's acts and faults, 263 *et seq.* See **CO-TRUSTEES**.
- co-trustees, office of, is joint, 258 *et seq.* See **CO-TRUSTEES**.
- Court assumes office where no trustee appointed, 835.
- delegation of, by trustee, 252 *et seq.* See **DELEGATION**.
- discharge from, how trustee may claim, Chap. XXV., 645—673. See **DISCHARGE**.
- disclaimer of, distinguished from disclaimer of estate, 198. See **DISCLAIMER**.
- personal benefit, trustee must not derive from office, 180, 275 *et seq.* See **CONSTRUCTIVE TRUST**.
- survivorship of, 261 *et seq.*

**OFFICIAL LIQUIDATOR**.

- not entitled to same latitude as trustee as to costs, 991.

**OFFICIAL TRUSTEE**.

- charity, of funds of, 361, 933. See **CHARITY**.
- of lands of, 933.

**OPERATION OF LAW**.

- trusts resulting by, distinguished from implied and constructive trusts, 108 note (1).
- Frauds, Statute of, how affected by, 193.
- intention expressed or presumed that grantee or devisee should not take beneficial interest, 147.
- purchase in name of third person, by reason of, 163 *et seq.*
- voluntary conveyance, by reason of, 144. See **RESULTING TRUST**.

**OPINION**.

- charity commissioners, of, is an indemnity, 933.
- counsel, of, trustee acting under, how far protected, 207 note (a), 346, 347, 685. See **COUNSEL**.
- cases for, and opinions, trustee when bound to produce, to *c. q. t.*, 975, 976.
- Court, of, how and when obtained, 350, 352, 618 *et seq.*
- religious, trustee of chapel holding, contrary to those of founder, 42.

**OPTION**.

- conversion of property, effect of optional direction for, 947, 948.
- whether exercise of option to purchase effects retrospective conversion, 952.
- trustee or executor cannot grant lease with option of purchase, 425.

**ORDER OF COURT OF EQUITY**. See **DECREE**; **JUDGMENT**.

- contingent right, discharging, 1014 *et seq.* See **TRUSTEE ACTS**.
- conversion, how far effected by, 151, 152, 951.
- judgment, has same effect as, 804.

[The paging refers to the [\*] pages.]

ORDER AND DISPOSITION, 242 *et seq.* See BANKRUPTCY.

ORDERING AND DIRECTING.

may raise a trust, 131.

ORDERS, GENERAL. See GENERAL ORDERS ; RULES OF COURT.

ORIGINATING SUMMONS.

questions affecting trusts may now be determined by means of, 350.

ORPHANAGE SHARE.

money to be laid out on land in favour of child, formerly not brought into hotchpot, 941.

OUTLAWRY.

civil proceedings, in, now abolished, 284 note (*h*).

felony, upon, equivalent to attainder, 28, 250.

forfeiture or escheat upon, 250; none for treason or felony, *secus*, misdemeanour, 250.

misdemeanours and civil actions, in, a contempt of Court, 28, 250.

trustee, of, 250.

OVER-PAYMENT.

by trustee or executor, effect of, 356, 357.

PAPISTRY ACTS.

purchase in contravention of, does not give raise to resulting trust, 167.

PARAMOUNT TITLE.

notice of, to trustees, effect of, 285.

PARCELS.

by what description trustee should convey, 685.

whether trustee can be required to divest himself of trust estate in, 685.

PARENT AND CHILD. See INFANT.

advancement, presumption of, on purchase by parent in name of child, 170 *et seq.* See ADVANCEMENT.

influence of parent, child protected against, after attaining majority, 993.

maintenance of child, duty of parent to provide for, 586.

meritorious consideration, parent cannot urge, against child, 81 note (*a*).

portions, doctrines as to, applicable as between parent and child, 389 *et seq.*, 402.

PARISH ; PARISHIONERS.

account, retrospective, not directed against, 936.

acquiescence, parishioners whether bound by, 870, 923.

action by, to set aside nomination of clerk, 927 note (1).

advowson, trust of, for parishioners, how carried into effect, 85, *et seq.*, 257, 927.

charities, apportionment of, on division of parish, 929.

clerk, election of, *prima facie* in trustees, 86 ; when in parishioners, *ib.*

"parishioners and inhabitants," meaning of, 86 *et seq.*, 539 ; of "chiefest and discreetest," 87 ; of "ratepayers," 88.

property of, when vested in churchwardens and overseers, 532.

qualification of "parishioner," how gained, 539.

trust for poor of parish, how carried into effect, 85, 531, 532.

PARLIAMENT.

Act of, necessary for total alteration of scheme of charity, 535.

application to, costs of, when allowed to trustee, 580.

Bill in, money paid for not opposing, how treated, 190.

costs of opposition to, when allowed, 580, 636.

fagot voters, conveyances for purpose of creating, 105.

member of, trustee cannot vote for, 235, 681 ; but *e. g. t.* may, 235, 682.

resulting trust not implied in evasion of Act of Parliament, 166.

splitting votes, conveyances, &c. for purpose of, 105.

[The paging refers to the [\*] pages.]

## PARLIAMENTARY SECURITIES.

investment in, 308, 315, 316. See INVESTMENT.  
 meaning of "parliamentary stocks and funds," 322, 323.

## PAROL ; PAROL EVIDENCE. And see WRITING.

acceptance of trust, parol evidence admissible on question of, 205.  
 ademption, to rebut or raise presumption of, 403.  
 advancement, parol evidence to prove or rebut presumption of, when admissible, 175, 176.  
 chattels personal, trust of, may be declared by parol, 53, 54.  
 Crown, parol evidence not admitted to prove declaration of trust by, 21.  
 declaration of trust requiring writing, parol evidence of surrounding circumstances admissible, 56.  
     not affected by subsequent declaration, 54.  
     approval of draft declaration does not amount to, 54.  
 disclaimer by parol, whether effectual, 199.  
 election, whether it may be evidenced by parol, 962.  
 equitable interest formerly transferable by, 693, 720.  
 executors, how far formerly admitted against title of, to residue, 60.  
 following trust property, admissible for purpose of, 169, 896.  
 fraud, in cases of, 64.  
 investment of trust money in land, whether capable of proof by, 169.  
*loco parentis*, of intention to place oneself in, 402, 403.  
 merger, intention as to, capable of proof by, 729.  
 presumption of law may be rebutted by, 147.  
 purchase in name of another, to prove, 167, 168. See RESULTING TRUST.  
 purchaser, nominal, after death of, whether admissible, 168, 169.  
 resulting trust not rebutted by, when devisee or grantee is expressly made trustee, 59, 147, 149.  
     *secus*, when mere presumption of trusteeship, 60, 147.  
     or in case of purchase in name of stranger, 169.  
     whether admissible against defendant's denial by answer, 168;  
     whether after his death, 168, 169.  
 satisfaction, to rebut or raise presumption of, 403.  
 secret trust, parol evidence to show, when admissible, 62, 64.  
 trust, when capable of being declared by, 51 *et seq.*, 61.  
     when capable of being rebutted by, 59, 60, 147 *et seq.*  
     when parol evidence is admissible to prove, 144, 145.  
 trustee under parol trust, whether entitled to release under seal, 358.  
 use when capable of being declared by, 51, 52.  
 will, parol trust cannot be declared upon property given by, 58, 59.  
     except in case of fraud, 61.

## PARTIES.

conveyance, to, by trustee or *c. q. t.*, 447, 685 *et seq.* See CONVEYANCE.  
 duty of trustee to see that proper parties are before the Court, 351.  
 service of, on application to Court for advice, 618, 619.  
     on petition under Trustee Acts, 1019, 1025, 1033 *et seq.*  
 suits relating to trusts, to, 970, 975.

## PARTITION.

judgment for, makes legal owner a trustee within Trustee Acts, 1026.  
 power of, when inserted by Court in settlement under executory trust, 127, 128.  
 power to concur in, conferred by Settled Land Acts, 555, 557.  
 power to sell or sell and exchange, whether authorized by, 427.

## PARTITION ACTS.

sale of real estate of infant or lunatic under, proceeds still realty, 151.  
     and so formerly as to married woman, 152.  
     but since Act of 1876, sale with married woman's consent operates as a conversion, 152.



[The paging refers to the [\*] pages.]

**PARTNER.**

- account against, in respect of assets of deceased, 277, 278.
- account by, against estate of deceased partner when barred by laches, 872.
- breach of trust by co-partner, when liable for, 902, 913, 916.
- change of firm, right of set off how affected by, 698.
- deceased partner, partner trading with assets of, how far liable, 277, 278, 894.
- following assets employed in trade, rights of *c. q. t.* as to, 894.
- interest of, in proceeds of real estate, is within Statute of Mortmain. 148 note (e).
- judgment against firm does not cause merger of separate liability, 909.
- jus accrescendi* excluded as between co-partners, 164, 165.
- manager of partnership, unauthorized borrowing by, 595.
- notice to, is notice to partnership, 709.
- payment by trustees to, how to be made, 355.
- production of documents by co-partners of trustee or executor, 976.
- profiting by his fiduciary relation is constructively a trustee, 187, 277.
- purchase, may, from representatives of deceased partner, 490.
- renewing a lease is trustee for partnership, 181.
- set-off by members of firm, 701.
- share in partnership forming part of residue, income attributable to tenant for life, 304.
- solicitor who is trustee, cannot employ his partners to act for trust, 281, 282.
- unless by the articles he is precluded from profiting thereby, 282.
- surviving partner, whether in fiduciary relation to deceased, 277 note (i).
- Lord Westbury's views as to, *ib.*
- time and trouble, surviving partner cannot charge for, 628.
- trading with assets of deceased partner, must account for profits, 277.
- but not for extra profits if he did not know he was a partner, 278.
- or has *bond fide* settled partnership accounts, 278.
- trustee, of, cannot purchase trust estate, 486.
- when liable for breach of trust by co-partner, 902, 913, 916.
- trustee who is, account against, for share of profits arising from trust money, 277 note (a), 894.

**PATENT.**

- declaration of trust by Crown must be by, 48.
- equities in respect of, enforceable as of other personal property, 167.
- registration of patents for invention, 167.
- notice of trust not allowed on register, 167.

**PATENTS, DESIGNS AND TRADE MARKS ACT, 1883, 167.**

**PAYMENT.** See RECEIPT.

- assignees of bankrupt, by, mode of, 255.
- bank, into, to account of trust, 255, 474.
- charity, of trust money of, to official trustee, 361.
- Court, into, 976 *et seq.* See PAYMENT INTO COURT.
- investment in consols considered equivalent to, 418.
- legatee, when he may claim payment of legacy to buy annuity, 574, 690;
- or where accumulation directed, 689.
- small sums, of, when allowed without taking out administration, 354, 355.
- sole trustee, to, 355, 356.
- trust to "pay" or to "pay or permit to receive," whether legal estate passes by, 210, 212, 216.
- trustee, by, 352 *et seq.*
  - to agent, 353.
  - to *c. q. t.* abroad, 353, 354.
  - to husband of *feme covert*, 902, 903.
  - to infant, 355.

[The paging refers to the [\*] pages.]

**PAYMENT**—*continued*.

to lunatic, 355.

to mortgagor, 331.

to partner, 355.

trustees, to, of purchase or other money, how to be made, 292, 447, 448, 473, 474.  
will, in pursuance of directions contained in, 271.

**PAYMENT INTO COURT.** Chap. XXXI., sect. 3, 976—982.

account, title of, 998 note (b).

**admission**, upon, when ordered, 977 *et seq.*

answer, formerly on admission in, 977, 978.

but now upon any admission direct or indirect, 978.

payments not mentioned in pleading may be verified by affidavit,  
980.

title, admission of, formerly necessary, 978.

**sufficiency of admission**, 979 *et seq.*

admission of receipt of money sufficient, 979.

fund need not be in defendant's hands, 979.

admission from which liability merely inferred not generally  
sufficient, 980.

nor where trustees mean forthwith to apply fund, 981.

trustee or executor, admission by, that he owes a debt to the estate, 980.

**application for**, how made, 976.

balance, of, where payments have been made, 980.

compulsorily, when ordered, 976.

debtor to estate, by, not ordered, 980.

unless executor or trustee, 980.

decree, after, 979.

distringas, "notwithstanding" notice in lieu of, 982.

equity to settlement, where trustee thinks *jeme covert* entitled to, 742.

executor, after discovering debts of testator allowed to have money paid  
out again, 998.

must pay in to limited and not to general account, 998.

and money paid in to general account may be carried over, 998.

hearing, at, ordered though refused on motion, 981.

infant, of money of, 360, 1036.

injunction against transfer, "notwithstanding," 982.

lunatic, of money of, 1036.

majority of trustees, by, how made, 361, 997, 1007.

motion for, proceedings on, 976, 977.

order for, whether an order of course, 981.

parties, what, must be before the Court, 976, 977.

policy monies, of, 997.

purchaser, by, when permitted, 996.

where there is power of sale but not of signing receipts, *quære*, 996.

rise in price of stock, after payment in and investment, 492.

stakeholder, of money in hands of, 977.

time, what, allowed for, 981.

**title of party applying for**, 976.

partial title sufficient, 977.

possible title sufficient, where all parties before Court, 977.

where applicant's title clear Court has ordered defendant to pay in  
only his share, 977.

trustee or executor, by, when ordered on admission, 977 *et seq.* See *supra*,  
**admission**.

Trustee Relief Acts, under, proceedings on, 998 *et seq.* See **TRUSTEE RE-  
LIEF ACTS**.

trustee paying in under, is trustee "refusing or declining to act," 999.

whole fund should be paid in, 999.

[The paging refers to the [\*] pages.]

# PAYMENT OUT OF COURT.

Lands Clauses Act, under, 565, 960, 985. See LANDS CLAUSES ACT.  
 married woman, to, upon her separate examination, 954.  
 examination dispensed with where sum less than £200, 955.  
 tenant in tail, to, under Lands Clauses Act, 960, 961.

# "PAY THE RENTS."

trust to, not within the Statute of Uses, 210.

# "PAY UNTO OR PERMIT AND SUFFER TO RECEIVE."

whether within Statute of Uses, 210 *et seq.*

# PEERAGE.

settlement of property to accompany peerage, directions for, how carried out, 124, 125.

powers proper to be inserted in, 127.

trust of, cannot be created, 47 note (a).

# PENSION:

from Crown to A, trust of, cannot be raised by parol for B, 52.

# PERFECT TRUST.

requisites for creation of, 67 *et seq.*

voluntary assurance, under, 67 *et seq.* See VOLUNTARY SETTLEMENT.

# PERISHABLE PROPERTY, 300. See WASTING PROPERTY.

# PERJURY.

against denying his character may be indicted for, 168.

# "PERMIT AND SUFFER 'A' TO RECEIVE RENTS."

within the Statute of Uses, 210.

# PERNANCY OF PROFITS.

right of *c. q. t.* to, 674 *et seq.*

# PERPETUITY.

accumulation, trust for, leading to perpetuity when void, 89, 90, 97.

charitable or public trusts not affected by rule against, 20.

contingent remainders, application of rule against perpetuity to, 384.

direction for leasing charity land under true value is void for, 544.

indemnity, trust for, against perpetual outgoing, 98.

management, trust for, during minorities when void, 98.

power how affected by rule against, 97, 98, 605.

restraint on anticipation may be void for, 98, 786.

trusts when obnoxious to rule against, 89, 97.

# PERSON.

equity attaching to the, 48 note (c).

# PERSONA DESIGNATA.

when heir or next of kin may claim as, 953.

# PERSONAL CONTRACT.

disclaimer of, 200.

# PERSONAL ESTATE.

blended real and personal estate, effect of gift of, 150, 159.

conversion of, by trustee, 963. See CONVERSION.

direction that residuary real estate shall devolve as, effect of, 951, 952.

gift of, will not pass undisposed of proceeds of sale of testator's lands, 159  
 unless proceeds directed to be taken as personal estate, 159.

or intention collected from will specially worded, 159.

*secus* where testator himself entitled to money, 949.

whether it will pass lapsed legacies from proceeds of sale of real estate,  
 159, 160.

pure personalty, when lands directed to be converted, proceeds will not  
 pass as, 950, 951.

[The paging refers to the [\*] pages.]

**PERSONAL ESTATE**—*continued*.

settlement of, cannot be made to follow realty exactly, 85, 116.  
 strict settlement of, how effected, 98, 116.  
 testator, of, must, properly speaking, be such at his decease, 159.

**PERSONAL REPRESENTATIVE.** See EXECUTOR.

proceeds of real estate to be converted pass to, 949.  
 trust and mortgage estates now devolve on, 226.  
 trustee, of, action against, for trustee's breach of trust, 906.

**PERSONAL SECURITY.**

assets must not be left outstanding upon, 290, 291.  
 investment upon, by trustee improper, 306, 327; unless under express power, 316. See INVESTMENT.

**PERSONALTY.** See CHATTELS; PERSONAL ESTATE.

**PETIT TREASON.**

escheat and forfeiture of property upon conviction or attainder for, 27, 28, 284.

**PETITION.**

advice of Court, for, under Lord St. Leonards' Act, 352, 618 *et seq.*  
 discharge of trustee, for, 672.  
 equity to settlement, to enforce, 741.  
 Lord St. Leonards' further relief Act, under, 352, 618 *et seq.*  
 new trustees, for appointment of, 851, 1030. See TRUSTEE ACTS.  
     under Bankruptcy Act, 850.  
     where real property in trust for charity, 851.  
 restraining order, for, 971.  
 Romilly's Act, under, 851, 928.  
 service of, 433 note (b), 1033, 1034.  
 stop order, for, 711, 712.  
 Trustee Acts, under, 1030, 1031, 1033 *et seq.* See TRUSTEE ACTS.  
 Trustee Relief Acts, under, 361, 1000, 1006. See TRUSTEE RELIEF ACTS.

**PETITION OF RIGHT.**

remedy by, where Crown is trustee, 30.

**PETO'S ACT** (13 & 14 Vict. c. 28), 852, 853.

**PIN-MONEY.**

arrear of, whether recoverable, 776 note (r), 777, 778.  
 savings out of, belong to husband, 774.

**PLEADING.**

Frauds, Statute of, when defendant must plead, 55.  
 Limitations, Statute of, how to be pleaded, 356, 869.  
 presumption, in matters of, 871.

**POLICY OF INSURANCE.** See INSURANCE.

*chose in action*, is, within Bankruptcy Act, 243.  
 lien on policy monies for payment of premiums, 903 note (f).  
 Married Women's Property Acts, under, for benefit of wife and children, 789, 792.  
 mortgage of, implies power to give receipts, 453 note (b).  
 notice of assignment of, what sufficient, 709.  
 payment of monies into Court under Trustee Relief Act, 997.  
 trustee of, rights and duties of, 903.

**POOR OF PARISH.**

limitation to, void at law, 46, 85.  
 trust for, how carried into effect, 85, 531, 532, 538.

**POOR OR NECESSITOUS RELATIONS.**

gift to, how construed, 836 note (1), 843.  
 power of distribution amongst, how construed, 836, 843.

[The paging refers to the [\*] pages.]

# POOR LAW GUARDIANS.

repayment to, of expenses incurred for maintenance of lunatic, 997.

# PORTION. Chap. XVII. 385—421.

accumulation of income for raising, what permissible under Thellusson Act, 93.

ademption of legacy, by subsequent advance by parent or person *in loco parentis*, 401 *et seq.*

advancement by way of portion, definition of, 588 note (b).

advances to children regarded as portions, 404, 588.

amount to be raised for, 408 *et seq.*

annual rents and profits, when to be raised out of, 420.

Chancery Division, causes as to portions assigned to, 421.

contingent, where fund is, interest of portionist is, 397.

costs of raising, 412.

daughters treated as younger children, 388.

distribution, period of, when the time for ascertaining portionists, 386, 390 note, 393.

doctrine of, whether applicable only to parents and persons *in loco parentis*, 389, *et seq.*, 402.

double portions, rule against, 403, 406.

eldest child, when regarded as younger, 386, 388, 392.

eldest daughter treated as younger child, 388.

eldest son, when disentitled to portion, 388, 389, 393.

even where estate is insufficient to meet charges upon it, 388.

election, persons entitled to portions put to, 408.

heir not considered a younger child, 386, 392.

income or *corpus*, whether raisable out of, 419, 420.

interest on, when portionist is entitled to, 409 *et seq.*

entitled although portion not vested, 410.

but not where portion raisable out of annual rents, 410.

rate of, 409; allowed by way of maintenance, is in discretion of Court, 410 *et seq.*

investment of, in consols, equivalent to payment, 418.

land, portion charged on, failing sinks for benefit of inheritance, 398 *et seq.*, 412.

legacy to child regarded as, 404.

*in loco parentis*, doctrine of portions, whether confined to persons in, 389 *et seq.*

maintenance, when allowed though *corpus* of portion not vested, 583.

monies, may be raised out of, 418, 420.

mode of raising, 418 *et seq.*

mortgage, when to be raised by, 418.

undivided shares, by mortgage of, 421.

portionists, who are, 386 *et seq.*; when estate is settled on an eldest son, 386 *et seq.*

where it is not so settled, 392 *et seq.*

power to appoint, exercisable in favor of children of tender years, but such appointment viewed with suspicion, 400.

power to charge, when Court will insert, in settlement under executory trust, 127.

presumption as to vesting of, 394 *et seq.*; when rebutted by language of instrument, 397.

presumption of ademption or satisfaction of, 403.

provisions for raising, excepted from Thellusson Act, 93.

raisable from time to time, how to be raised, 420, 421.

rents and profits, how and when to be raised out of, 419, 420.

where raisable out of, interest not allowed, 410.

vesting of portion, 399, 400.

residuary bequest to child regarded as, 405.

[The paging refers to the [\*] pages.]

# **PORCION—continued.**

- reversion, when raisable out of, 412 *et seq.*
- sale or mortgage, whether to be raised by, 418, 420.
- satisfaction of, by subsequent gift or legacy, 401 *et seq.*
- second son succeeding to estate disentitled to portion, 387.
- stranger, doctrine of portions whether applicable to gift by, 389 *et seq.*
- strangers may indirectly profit by doctrine of, 407, 408.
- timber, when to be raised out of proceeds of, 418, 420.
- time for ascertaining parties entitled to, 386, 390 note, 393.
- time for raising, 412 *et seq.*, 417, 421:
- time of vesting of, 394 *et seq.*
- title deeds, trustees of term for portions not entitled to custody of, 421.
- trust to "provide suitably" for younger children held not too vague, 117.
- vesting of, 385, 393, 394 *et seq.*
  - at what time portions vest, 394 *et seq.*
  - where portion fund has to be created, 397
  - where settlement silent as to vesting, 397, 398.
  - where portion raisable out of rents, 399, 400.
- younger child when treated as eldest, 386 *et seq.*, 392.

# **POSSESSIO FRATRIS, 723, 824.**

# **POSSESSION.**

- adverse, of equity of redemption, bars all claim, 725.
- of wife's realty, excludes husband's curtesy, 734.
- trustee and *c. q. l.*, as between, cannot exist, 863.
- secus*, in case of constructive trust arising by fraud, *ib.*
- cestui que trust, of, operation of Statute of Limitations how affected by, 881, 882.
- right of, to possession, 674 *et seq.*
  - as to chattels, 683, 684.
  - as to lands, 674.
  - recognized in equity only, until recent Act, 677.
  - rent, arrears of, indemnity to be given in respect of, 686, 687,
- equity, action in, when barred by long possession, 863, 872. See LIMITATION OF ACTION.
- purchase by trustees of estates in, 505.
- reduction into possession of married woman's choses in action, 24, 739 *et seq.*, 745. See MARRIED WOMAN.
- tenant for life, equitable, when entitled to, 675.
- transmutation of, where necessary to creation of a trust, 67 *et seq.*
- trustee, of, is possession of *c. q. l.*, 863, 864, 880, 882.
- trustee for sale should not give up, before payment of purchase money, 441.
- whether receiver appointed if he do so, 984.

# **POSSIBILITY.**

- cestui que trust of mere possibility cannot maintain action, 854.
- in a trust assignable, 692.

# **POST.**

- "assign in the," meaning of expression, 246; bound by trust, 246.

# **POST OBIT.**

- trust for creditors, whether revocable, 518.

# **POST OFFICE SAVINGS BANK.**

- trust money may be paid into, 361.

# **POVERTY.**

- executor, of, whether ground for injunction or receiver, 856.
- laches whether excused by, 866, 870.
- presumption of release of right, its effect as to, 870.
- statutory bar runs notwithstanding, 866.
- trustee, of, whether ground for injunction or appointment of receiver, 856, 983.

[The paging refers to the [\*] pages.]

## POWER.

- administration action, effect of, on powers of trustees, 449, 617, 618.
- advancement, of, when Court will insert, in settlement under executory trust, 127. And see **ADVANCEMENT**.
- alienation by trustee, whether power will remain after, 608, 609.
- annexed to estate or office of trustee, 19, 598.
  - survivorship of, 610 *et seq.*
- anticipation, should not be exercised by, 615.
- appendant, married woman may exercise, 33.
- appointment** under—
  - married woman, by, effect of, 919 *et seq.*
  - perpetuity, when void for, 98.
  - when appointment fails, the property results to the appointor, 153.
- arbitrary, when exercise of power is, 600, 612, 613.
  - power does not survive, 612, 613.
- assets of appointor, when property appointed is, 919 *et seq.*
- assign within meaning of, who is, 431, 603.
  - new trustees are, 608.
- assignment of estate of donee of power, exercise of power how affected by, 607, 608.
- attorney of, 353, 354. See **ATTORNEY**.
- bare power and power coupled with trust distinguished, 600, 611.
- borrowing powers of directors of company, 595.
- building leases, to grant, 546.
  - when inserted by Court in settlement under executory trust, 127, 128.
- ceases when settlement is at an end, 605, 606.
- charity, control of Court over trustees of, 616.
- collateral, 19, 598.
  - infant may exercise, 37, 599.
  - married woman may exercise, 33, 599.
- consent to exercise of, 604.
  - bankruptcy of person whose consent required, 589, 622.
  - under Settled Land Acts, what required, 621 *et seq.*
- construction of.**
  - "assigns," power to A. and his assigns, 603.
  - "continuance of the trust," power during, 605.
  - "executor," power to, 604.
  - "executors," power to trustee and his executors, 603.
  - "heirs," power to A. and B. and their heirs, 601, 602.
  - "survivor," power to trustees and survivors, 604; to trustee and survivor, 604.
  - "trustees," "trustees for the time being," 604.
- continuing or retaining investments of, effect of, 320, 326.
- continuing trustee, when exercisable by, 606, 607.
- contract not to exercise, 610.
- coupled with trust, 600, 610, 611, 613.
- Court, control of, over power,** 613 *et seq.*, 834 *et seq.*
  - mere discretionary powers not interfered with by Court, 613.
    - except where there is fraud or misbehaviour or trustees decline to exercise discretion, 616.
  - when and how Court will exercise power, where donee fails to exercise same, 834 *et seq.*
    - where power is testamentary, 840; where not merely testamentary, 840 *et seq.*
    - where subject of gift incapable of division, 844 *et seq.*
    - whenever possible Court will execute power, 844.
- decree in action for execution of trusts suspends powers of trustees, 449, 617.
  - secus* the mere institution of action, 617, 618.

[The paging refers to the [\*] pages.]

**POWER**—*continued.*

- defective execution of, by married woman, aided, 920.
- delegation of, 252 *et seq.*, 471.
- directors of trading company, power of, to borrow money, 595.
- directory, what powers are, 600, 601.
  - as to number of trustees, 667.
- disclaimer of, 607.
- trust, of, effect of, upon exercise of power, 606, 607, 835.
  - release with intention of disclaiming, effect of, 608.
- discretionary**, 572, 573, 613 *et seq.*, 836 *et seq.*
  - conversion, to make, does not change nature of property in equity, 951. See **CONVERSION**.
  - Court cannot interfere with exercise of mere discretionary powers, 613, 837.
    - secus* if trustee "authorized and required," 614, 839.
    - or where there is fraud, misbehaviour, or trustees decline to exercise discretion, 616, 835.
    - sale by Court where trustees have discretionary power effects conversion, 152.
  - legal estate taken by trustee, effect of power in determining, 218, 219.
  - mixed trust and power, mode of execution; discretionary, 19.
  - renewal of lease, for, how construed, 365.
  - whether trustees exercising, should state reasons for choice, 615.
  - distinction between different kinds of, 572, 598.
- distribution, of, distinguished from power of selection, 838, 839, 842.
- duration of, 605, 606, 609, 610.
- equitable distinguished from legal powers, 572, 598.
  - may be annexed to estates or simply collateral, 598, 599.
- exchange, of, quære whether a proper power, 128, 129.
- execution of, prevents resulting trust, 153.
  - restrained by Court, in what cases, 855, 856.
  - takes fund out of settlement, though not entirely disposed of, as to beneficial interest, 153.
- executor of donee, when exercisable by, 603, 604, 609.
- executory trust, what powers may be introduced in settlement under, 126 *et seq.*
- extinguishment, of, 605, 606.
  - where real and personal estate coupled together, 609, 610.
  - by married woman, 783.
- form, matter of, may be dispensed with to avoid circuitry, 573, 574.
- formalities, trustees should see that requirements as to, are strictly complied with, 688.
- fraud, interference of Court in cases of, 616.
- fraudulent appointment, trustee suspecting, whether compellable to convey, 686.
- general and special distinguished, 572.
  - donee of general, executor of, may call for transfer of appointed funds, 688.
  - secus* in case of special power, 688.
- gift, words of, distinguished from words of power, 838 *et seq.*
- gross, in, married woman may execute, 33.
  - in what case infant can, 37 599, 600.
- heir of donee, when exercisable by, 609.
- imperative, when exercise of power is, 600.
  - breach of trust by neglecting to exercise, 904.
  - failure of donee of, Court protects *c. q. t.* against, 834 *et seq.*
  - mixed trust and power, exercise of power imperative, 19.
- improvements, to make, 575 *et seq.* See **IMPROVEMENTS**.



[The paging refers to the [\*] pages.]

**POWER**—*continued*.

- infant, when he may exercise, 37.
- investment, of, must be strictly construed, 326. See **INVESTMENT**.
- Court will not in general control discretion of trustees as to, 614.
- jointure, to charge, 758.
  - when Court will insert, in settlement under executory trust, 127.
- leases, power of trustees to grant, 595. See **LEASE**.
  - whether Court will insert power in settlement under executory trust, 127. See **LEASE**.
- legal distinguished from equitable, 572, 598.
- legal estate taken by trustees, effect of powers as determining, 218, 219.
- maintenance, to apply income for, 579, 582 *et seq.* See **MAINTENANCE**.
  - creditors of *c. q. t.* how far entitled to benefit of, 99 *et seq.*
  - discretion of trustees not interfered with by Court, 614, 615.
  - whether Court will insert power in settlement under executory trust, 127.
- management, of, distinguished from powers which confer personal privileges, 127.
  - of land of infant during minority, 578 *et seq.*
  - sanction of Court to exercise of, how obtained, 618 *et seq.*
- married woman may exercise 33, 775.
  - when exercise of, renders appointed property her assets, 919 *et seq.*
- mere power, meaning of, 600, and see 839; does not survive, 601, 602, 610, 611.
- mining leases, to grant, 505, 553, 682. See **MINES**.
  - when inserted by Court in settlement under executory trust, 127, 128.
- mixture of trust and power, 19, 836.
- moral considerations, trustees exercising powers must not regard, 606.
- mortgage powers may be exercised by assigns, 603.
- mortgagee, statutory powers of, 431, 432.
- new trustees**, power to appoint, 646 *et seq.* See **NEW TRUSTEES**.
  - administration action, how affected by pendency of, 617, 618, 669.
  - donee of, whether he may appoint himself, 666,
  - statutory, under Lord Cranworth's Act, 647.
    - under Conveyancing Act, 1881, 648 *et seq.*
    - application of, to previous settlements, 648, 649.
  - survivorship of trust notwithstanding existence of, 431.
  - usual form of, 646.
  - when Court will insert, in settlement under executory trust, 127, 128.
- new trustees, powers exercisable by, 608, 647, 670. See **NEW TRUSTEES**.
- non-execution of, Court will not aid, 834
- notice to *c. q. t.* of trustee's intention to exercise, 573.
- objects of, must be gathered from whole instrument, 842.
- partition, of, when Court will insert, in settlement under executory trust, 127, 128.
- perpetuity, rule against, application of, to power, 97, 98, 605.
  - appointment when obnoxious to, 98.
  - restraint on anticipation, affecting to impose, 98.
- personal representative of donee, when exercisable by, 609.
- portions, to appoint, how to be exercised, 400.
- portions, to charge, when Court will insert, in settlement under executory trust, 127.
- "proper," what is, in settlement, 128, 129.
  - under Conveyancing Act, 1881, 129.
- receipts, of signing, 450 *et seq.* See **RECEIPT**.
- reimbursement, powers of trustee as to, 594.
- "relations," to appoint amongst, how construed, 842 *et seq.*
  - whether in default of appointment they take *per stirpes* or *per capita*, 843.

[The paging refers to the [\*] pages.]

**POWER**—*continued.*

- power of selection implied, where not implied in case of "children," 843 note (f).
- release of, 610.
  - donee may release by deed under Conveyancing Act, 610.
  - but not where power coupled with a duty, 610.
  - married woman, by, 783, 955.
- release, to make, of equity of redemption or mortgage, 593.
- repairs, to make, 574, 575. See **REPAIRS**.
- request for exercise of, how to be testified, 429, 430.
- resulting trust of appointed fund in favour of donee of power, 153.
- retirement of trustee by virtue of, 646, precautions to be observed on, 654.
- revocation, of, is personal, to donee, 612.
- sale, of.** See **SALE**.
  - advice of Court as to exercise of, 619, 620.
  - authorized under settlement by reference, 128, 130.
  - discretionary, when exercise of power is, 613.
  - duration of, 605, 606.
  - executory trust, when Court inserts power in settlement under, 127 *et seq.*
  - implied, when, 434.
  - improper exercise of, injunction to restrain, 435, 855.
  - mortgage, in, 431, 432, 603. See **MORTGAGE**.
  - partition not authorized by, 427.
    - but is by power of sale and exchange, 427.
  - personal representative of surviving trustee empowered to exercise, 233.
  - receipts, power to give, whether implied in, 460.
  - settlement, in, effect of usual power, 427, 428.
  - statutory, 428, 429, 431, 432.
  - surplus proceeds, whether bound by judgment against mortgagor, 799.
  - survivorship of, 431, 611, 612.
  - trust for sale distinguished from, 451.
- selection, of, distinguished from power of distribution, 838, 839, 842.
  - not interfered with by Court, 615.
- Settled Land Act, 1882, restrictions imposed by, on powers of trustees, 621 *et seq.* See **SETTLED LAND ACTS**.
  - advice of Court as to exercise of powers under, how obtainable, 620, 621.
- severance of estate from, 610.
- simply collateral, 598.
- special distinguished from general, 572.
- Statute of Uses, anterior to, summary of law as to, 611 note (1).
- statutory**—
  - new trustees, to appoint, 647 *et seq.*, 850 *et seq.*
  - receipts, to give, 293, 451, 452.
  - sale, of, in mortgage, 431, 432.
    - in settlement, 428, 429.
  - tenant for life, of, under Settled Land Act, 1882, 129, 428, 429, 436, 553, 555.
- strict, distinguished from directory, 600.
- survivorship of**, 261, 431, 610 *et seq.*
  - arbitrary power does not survive, 612, 613.
  - Conveyancing Act, 1881, under, 261, 612, 613.
  - disclaimer of, trustee, on, 606, 607.
  - mere power to several does not survive, 601, 602, 610, 611.
  - power annexed to trust survives, 610, 611; *secus* where not so annexed, 612.

[The paging refers to the [\*] pages.]

**POWER**—*continued.*

- power given to trustees by name, 612.
- trust or power created by instrument subsequent to 31st December, 1881, survives, 261, 612, 613.
- tenant for life, consent of, to exercise of powers, when required, under Settled Land Acts, 621 *et seq.*
- tenant for life, of, how affected by his sale or mortgage, 668.
- under Settled Land Act, 1882, 129, 428, 429, 436, 553, 555.
- testamentary, in whose favour Court will exercise, 840.
- time for exercising, trustee must not anticipate, 615.
- trust distinguished from, 451, 839 *et seq.*
- trust, mixture of, and power, 19, 836.
- distinguished from trust to which power is annexed, 19.
- words of recommendation, &c., whether trust or power is created by, 135 *et seq.*
- "usual," what is, 127 *et seq.*
- varying investments, of, 318, 323. See INVESTMENT.
- vesting order cannot be made as to, 1013 note (e).
- will in exercise of, by married woman, 775.

**PRACTICE.** Chap. XXXII. 970—975.

- alternation in, by recent rules, 350 *et seq.*
- application to Lord Chancellor by petition to Great Seal where the Crown is visitor of charity, 530.
- appointment of new trustees, in proceedings for, 645 *et seq.*
- charging order, as to obtaining, 807 *et seq.*
- County Court, transfer of suit to, 362. And see COUNTY COURT.
- distringas, on application for, 970 *et seq.*
- Lord St. Leonards' Acts, under, 618, 619.
- notice in lieu of distringas, as to obtaining, 973 *et seq.*
- originating summons questions affecting trusts determined by means of, 350.
- payment of money into Court, as to, 976 *et seq.* See PAYMENT INTO COURT.
- production of documents by trustee, as to, 975, 976.
- receiver, as to appointment of, 982 *et seq.*
- restraining order on stock, shares, &c., as to obtaining, 971, 972, 974.
- special case, as to determination of questions by, 352.
- stop orders, as to obtaining, 712.
- Trustee Acts, under, 1009 *et seq.* See TRUSTEE ACTS.
- Trustee Relief Act, under, 996 *et seq.* See TRUSTEE RELIEF ACTS.
- wilful default, account with, not ordered on further consideration where omitted at hearing, 905.

**PRÆCIPE.**

- equitable tenant to, 694.

**PREACHER.**

- gift to find a, 530.

**PRECATORY TRUST.**

- children, in favour of, how executed, as to females, 132 note (a).
- doctrine of, does not apply to wills only, 132.
- recommendation to employ particular person does not amount to, 641.
- uncertainty as to object or subject matter of trust, does not arise in case of, 133.
- what words sufficient to create, 130 *et seq.*, 839.

**PRE-PAYMENT.**

- of trust money to trustees, 288.

**PRESENTATION.**

- tenants in common of advowson must cast lots for, 276.
- trust to purchase for particular person, whether simoniacal, 104.
- trustee may delegate mere act of, to proxy, 258.
- trustee of advowson presents but must have directions of *c. q. t.*, 234, 275.

[The paging refers to the [\*] pages.]

# **PRESUMPTION.**

- acceptance of trust, of, by lapse of time without disclaimer, 201.
- account, of settlement of, 870 *et seq.*
- ademption and satisfaction, of, 403.
- advancement, of, 170 *et seq.* See **ADVANCEMENT.**
- corporation, of notice to, not readily made, 936.
- death, of, by disappearance for seven years, 348, 349.
- disclaimer of trust, of, by lapse of time without action, 202.
- election by *c. q. t.*, of, when it arises, 961, 962.
- gift, of, by wife to husband of separate property, 777, 778.
- infant, gift to, presumption that he takes beneficially, 39, 40.
- law, of, may be rebutted by parol evidence, 147.
- where new property made over to trustees of old settlement, 145.
- limitation of action by presumption of release or other act after lapse of time, 869 *et seq.*
- merger, of, when it arises, 730 *et seq.*
- purchase of estate by trustee at price corresponding with trust money in his hands, 896.
- release, of, when it arises, 870.
- vesting of portions, as to, 394 *et seq.*

# **PRINCIPAL AND AGENT.** See **AGENT.**

# **PRIORITY.**

- creditor, of, over legatee, 524; over volunteer, 81 note (*f*).
- creditors, of, *inter se*, in administration of assets, 825 *et seq.* See **ASSETS.**
- fund in Court, of incumbrancers on, 711, 712. See **STOP ORDER.**
- judgment creditors, of, 246 note (*f*), 816, 825, 830 note (*f*).
- legal estate, by obtaining, 330, 863.
- mortgagees, of, 704 *et seq.*, 715. See **MORTGAGE.**
- notice, by giving, 702 *et seq.* See **NOTICE.**
- "*qui prior est tempore potior est jure*," 713, 862.
- time, by, 713 *et seq.*, 862.
- title deeds, by possession of, 714.

# **PRISON.**

- trustees of, not ratable, 235.

# **PRIVATE CONTRACT.**

- trustees may sell by, 434.

# **PRIVATE TRUST.**

- duration of, 20.

# **PRIVILEGED COMMUNICATIONS.**

- what are, 976.

# **PRIVILEGES.**

- cestui.que trust, of, 681 *et seq.* See **CESTUI QUE TRUST.**
- trustee, of, 234, 235.

# **PRIVITY.**

- estate, of, at first held essential to existence of trust 2.
- but *secus* in later times, 9.
- meaning of, explained, 3, 15.
- as regards *c. q. t.*, 3.
- person, trust annexed in privity to, 16.
- personal between plaintiff and defendant required to found jurisdiction as to foreign property, 49.

# **PRIZE OF WAR.**

- vests in sovereign, 22.
- warrant, royal, for distribution of, does not constitute Crown a trustee, 22.

[The paging refers to the [\*] pages.]

**PROBATE.** See EXECUTOR.

acceptance of trust by proving will, 201, 203.  
 act, executor may, before taking out, 483.  
 effect of taking out, 201 *et seq.*  
 executor may sell and give receipts before, 483 ; but purchaser not bound to pay, *ib.*  
 executor's title evidenced by, 483.  
 prerogative probate, whether term in trustee requires a, 224.  
 renunciation of, effect of, 197, 201, 202, 223.  
 sovereign, will of private property of, not admitted to, 22.  
 will of married woman appointing proceeds of land is entitled to, 949.

**PROBATE DUTY.**

payable on proceeds of land to be converted into money, 949.

**PRODUCTION OF DOCUMENTS,** 975, 976.

accounts, duty of trustee to produce, 975, 976.  
 cestui que trust entitled to, from trustee, 975.  
     but trusteeship must first be established, *ib.*  
 covenant for, by trustees, how to be framed, 443.  
 mortgages, of, upon which trust fund invested, 975.  
 opinions of counsel, trustee must produce, 680, 975.  
     unless they are part of his defence, 976.  
 trustee suppressing documents ordered to pay costs, 994.  
 vouchers, duty of trustee to produce, 449, 691.

**PROFIT.**

set off, defaulting trustee cannot, against loss, 907.  
 trustee must not make, from his office, 180, 275 *et seq.*, 668. See CONSTRUCTIVE TRUST.  
 same rule applies to agents, guardians, directors and promoters of companies, and other persons in a fiduciary position, 279 *et seq.*

**PROFITS OF TRADE.**

account of, what included in, 278.  
 partner trading with assets of deceased partner must account for, 277.  
 stranger trading with trust money not answerable for extra profits beyond principal and interest, 278.  
 trustee or executor trading with trust estate must account for, 276, 277, 340 *et seq.*

**PROHIBITION.**

against spiritual Court interfering in a trust, 17.

**PROMISE TO SUBSCRIBE,** by testator, effect of, 590.

**PROMISSORY NOTE.**

assignment of, upon trust, without indorsement, 72.  
 indorsement and delivery of, with view to testamentary disposition does not create trust *inter vivos*, 82.  
 married woman, by, binds separate estate, 761, 763.  
 trustees may not invest on security of, 306.  
 voluntary, creates debt, when, 80, 81 note (*f*).

**PROMOTER.**

company, of, is a constructive trustee, 279.

**PROOF.**

bankruptcy, in, 234, 912. See BANKRUPTCY.  
 mortgagee, by, in administration action, bankruptcy and under trust deed for creditors, 521.  
 trustee, in bankruptcy of, 241, 912 *et seq.*

**"PROPER POWERS."**

to tenant for life, what powers authorized by, 128, 129.

[The paging refers to the [\*] pages.]

# PROTECTION ORDER.

effect of, on married woman's *chose in action*, 346, 740, 757.

# PROTECTOR OF SETTLEMENT, 381, 382.

alien cannot be appointed, 382.

bare trustee is not, of settlement subsequent to Fines and Recoveries Act, 382.

bare trustee, who is, duties of, 382.

consent of, to disentailing deed, required, 381.

to vesting order under Trustee Act, 1016.

death of, 382 note (a).

disclaimer of office by, how to be made, 200.

dowress is not, 382.

equitable tenant for life in possession is, 682.

executory trust, whether Court will appoint protector to settlement in pursuance of, 121.

irresponsibility of, 121.

married woman is, where legal freehold limited to her separate use, 781.

number of protectors, not to exceed three, 382.

power of appointment of new protectors, may be given, 382.

trustee, protector is not, in respect of his power of consent, 382.

# PROVING WILL. See PROBATE.

# PROXY.

appointment of, distinguished from delegation of office, 257.

election of clerk or incumbent, trustees ought not to depute, to proxy, 257.

# PUBLIC POLICY.

trust in contravention of, not permitted, 94.

where not contravened, Court will execute trust, 84.

# PUBLIC TRUST. See CHARITY.

majority of trustees of, may bind the rest, 259, 540, 547, 592, 597.

meaning of term explained, 20.

perpetuity, not confined within limits of law against, 20.

"public purposes," meaning of, 20.

are all in a legal sense charities, *ib.*

remedy for enforcement of, is by information, 31.

# PUBLIC WORKS LOANS ACT, 1875.

payment into Court under, 997.

# PUR AUTRE VIE.

copyholds for lives, devolution of, under Wills Act, 165.

De Donis, estate *pur autre vie* not within statute of, 694.

leaseholds for lives, devolution of on personal representative, 165 note (m).

*quasi* entail, how barred, 694, 695.

special occupant, heir taking as, may disclaim, 197.

# PURCHASE.

agent, by, parol evidence of agency not admissible when no part of consideration paid by employer, 168.

charges, subject to, precautions in case of, 727.

charity lands, of, when set aside, 540.

child, in name of, effect of, 170 *et seq.* See ADVANCEMENT.

contract of, by testator or intestate, effect of, 806, 943.

contract of, power of trustee to enter into, 499, 500.

debt, of, by person in fiduciary relation to debtor, 276 *et seq.*

deposit on, trustee may make, 501.

equitable interest, of, notice necessary to complete, 704.

fixtures, of, on trust property by trustee, 276.

heir, by, of debt or incumbrance, 279.

[The paging refers to the [\*] pages.]

**PURCHASE—continued.**

incumbrance, of, by trustee, 276 ; or heir or devisee, 279 ; or by joint purchaser, 280.

money, duty of purchaser to see to application of, 451 *et seq.*

payment of, to trustees, how to be made, 447, 448.

whether purchaser may pay, into Court under Trustee Relief Acts, 996.

mortgagee, by, of mortgagor's wife's right of dower, 277.

resulting trust, when created by purchase in name of third person, 162 *et seq.* See **RESULTING TRUST**.

Settled Land Acts, under powers of, 559, 565, 570. See **SETTLED LAND ACTS**.

tenant for life, by, of incumbrance on settled estate, 280, 731.

of lands with borrowed money afterwards paid out of settlement money, 896.

trustee, by, from *c. q. t.* when upheld, 487.

trustee, by, of land out of trust monies, 896, 897.

lien of *c. q. t.* in such case, 897.

**trustee, by, of trust property, 484 *et seq.***

account against trustee, 491, 494.

agent for another, trustee cannot purchase as, 486.

auction at, not permitted, 484, 485, 489.

*cestui que trust*, trustee may purchase from, if relation of trustee and

*c. q. t.* dissolved and no concealment, 487.

confirmation of purchase by *c. q. t.* 497, 498.

consideration not necessary, 497.

requisites of, 497, 498.

costs of action to set aside purchase, 494, 991.

co-trustee, trustee cannot purchase from, 484.

nor sell to self and co-trustees, 503.

creditors, purchase by trustee for, not permitted, 489.

deterioration, compensation for, payable by trustee, 491.

devise by trustee before sale set aside, effect of, 494.

disclaiming trustee, by, permitted, 485.

fairness of transaction not a justification, 485.

laches when a bar to relief, 495 *et seq.*, 872.

distress of *c. q. t.* delay when excused by, 496.

ignorance, delay excused by, 496.

infant or married woman not barred by, 496.

name of another, in, not allowed, 484.

nominal trustee, by, permitted, 485.

partner of trustee cannot purchase, 486.

purchaser without notice, trustee purchasing from, is bound by trust, 859, 860.

reason of rule against, 484 *et seq.*

reconveyance, right of *c. q. t.* to, on payment of purchase-money and interest at £4 per cent., 491.

without prejudice to *bond fide* lessees, 492.

rents, account of, against trustee, 491.

repairs and improvements, allowance to trustee for, if sale set aside, 491, 493.

resale, right of *c. q. t.* to, 492.

trustee, where no advance, held to his purchase, 493.

whether resale in lots can be required, 493.

setting aside purchase, what terms imposed in case of, 490 *et seq.*

purchase-money, whether belonging to heir or personal representative of trustee, 494, 495.

shares, remedy of *c. q. t.* in case of, 494.

time within which relief must be sought, 495 *et seq.*, 872.

[The paging refers to the [\*] pages.]

**PURCHASE**—*continued*.

- trustee paying money into Court not entitled to rise in stock, 492.
- trustee, by, under trust for purchase of lands, Chap. XIX., 499–508.
  - adowson, purchase of, improper, 503.
  - contract, power of trustee to enter into, 499, 500.
  - conveyance by, how to be framed, 505 *et seq.*
  - copyholds for lives, purchase of, 503.
  - costs of purchase, how to be raised, 505.
  - co-trustee, purchase from, 503.
  - deposit, trustee justified in paying, 501.
  - disclosure of trust how avoided, 505.
  - drainage of settled lands, expenditure on, 504.
  - equity of redemption, purchase of, 503, 504.
  - fund in Court, out of, 505.
  - ground rents, purchase of, 502, 505.
  - house property, purchase of, 502.
  - impeachment for waste, tenant for life when to be subject to, 507, 508.
  - legal estate, duty of trustee to get in, 504.
  - mines, purchase of, apart from surface, 503.
  - new buildings, erection of, equivalent to purchase, 504.
  - repairs and improvements, not equivalent to purchase, 504.
  - reversion purchase of, 505.
  - tenant for life, purchase from, whether justifiable, 503.
  - timbered estate, purchase of, 502.
  - title, duty of trustee to procure good, 500, 501.
  - trustee contributing part of purchase-money, 506.
  - value of purchased property, duty of trustee to see to, 499.
- trustee, from, by co-trustees, 503.
- value, for, without notice, defence of, when applicable, 3, 16, 246, 726, 727, 833. See PURCHASER.
- wife, in name of, effect of, 170 *et seq.* See ADVANCEMENT.

**PURCHASER.**

- accidental damage to estate purchased must be borne by, 141.
- administration action, pending, should not purchase from trustees, 457.
- application of purchase-money, when bound to see to, 451 *et seq.* See RECEIPT.
- attorney, power of, when irrevocable in favour of purchaser, 353 note (c).
- breach of trust, with notice of, 423, 424, 457, 459.
- cestui que trust, from, may apply for transfer of legal estate, 1012.
- cestui que trust sub modo, purchaser is, 142.
- charges, keeping on foot, 727 *et seq.*
  - paying off, pending contract and before completion does not work merger, 727.
- charity estate, of, where sale improvident, 540.
- chattel, of, when compelled to restore to rightful owner, 860, 893.
  - not concerned to see to application of money, 477.
- chose in action*, of, from trustee bound by same equity as trustee, 862.
- constructive trust, bound by notice of, 858, 861. See *infra*, TRUST.
- covenants by vendor with, what may be required, 438.
- death of, intestate and without heir, after payment of price, effect of, 283 *et seq.*
- discretion of trustee cannot be questioned by, 426.
- doubtful equity, whether bound by, 860 *et seq.*
- equitable interest, of, inquiries and notice to be made and given by, 704.
  - priority of, over general and roving charge, 720.
- equity, to settlement of married woman as against, 742.
- executor, from, not bound to pay purchase-money before probate, 483.



[The paging refers to the [\*] pages.]

**PURCHASER**—*continued*.

- exoneration of property from charges as between several purchasers, 718, 719.
- expenses to be borne by, 449.
- heir of the body taking as, 113, 114, 119.
- heir taking as, 824, 953.
- improvement to estate purchased, is entitled to benefit of, 142.
- incumbrances, how he may protect himself against, 727.
- whether vendor must answer inquiry as to, 459 note (a).
- joint, lien of, for improvements, 165.
- judgment creditor is not, 246 note (f).
- who is purchaser as against, 811.
- judgment, onus of, when thrown on latter of two purchasers, 718.
- legal charge, purchaser bound by, whether with or without notice, 15.
- legal estate, priority by obtaining, 863.
- legatee, from, cannot be made to refund, 356.
- lien, with notice of, bound, 858.
- lien of, for improvements as against co-purchaser, 165.
- lunatic or idiot, from, without notice, 26.
- mortgagee with power of sale, from, 855 note (c).
- notice, importance of, as between purchasers, 702 *et seq.*, 859 *et seq.*
- notice, purchaser with, cannot obtain priority by giving notice or obtaining stop order, 711, 712.
- notice to, of intended breach of trust, effect of, 457, 459, 478 *et seq.* of will, 478.
- payment by, to trustees, how to be made, 292, 447, 448, 473, 474.
- to person who has ceased to be owner, 705.
- propriety of sale by trustee, when bound to see to, 450, 451.
- receipt of trustee, when discharged by, 451 *et seq.* See RECEIPT.
- release of mortgage by trustee, purchaser not bound to see to propriety of, 593.
- requisition by, as to incumbrances, 459 note (a).
- security to trustee, being solicitor, for costs set aside even as against purchaser, 630.
- time, lapse of, purchaser from trustees when put on enquiry by, 457 *et seq.*
- trust**, whether bound by, 246, 857 *et seq.*
  - purchaser of legal estate with notice is bound, 858.
  - rule applies to constructive trusts, 858; equitable incumbrance, 858; or lien, 858.
  - and conveyance by fine, 858.
  - but not to purchaser with notice from purchaser without, 859.
  - purchaser of legal estate without notice, not bound, 246, 833, 858.
  - although he purchased from purchaser with notice, 859.
  - but rule does not apply to charitable use, 859.
  - Statute of Limitations runs in favour of, 876.
  - purchaser of equitable interest, 858.
  - renewed lease, purchaser of, from trustee when bound by constructive trust, 185.
  - shares, purchaser of, without notice before registration, 859.
  - sufficiency of notice,—
    - presumed from recitals, when, 185.
    - whether purchaser bound by notice of doubtful equity, 860; or of title long neglected, 861.
  - trustee selling to purchaser without notice, and then becoming owner, trust revives, 860.
- value, for, without notice, 3, 16, 246, 833, 859 *et seq.* See *supra*, trust.
- voluntary settlement of realty not binding on, 81, 82.

[The paging refers to the [\*] pages.]

# QUALIFICATION.

cestui que trust, of, to be a juror, to sport, to vote for member of parliament, 681.  
coroner, to vote for, 234, 235, 681.  
trustee, of, 29 *et seq.*

# QUANTUM OF ESTATE.

taken by trustee, 212 *et seq.* See LEGAL ESTATE.

# QUASI TENANT IN TAIL.

how he may disentail, 694, 695.

# QUASI TRUSTEE.

costs of, 989.  
person assuming to act as trustee, liability of, 904.  
person reaping benefit of breach of trust is, 344.

# QUEEN. See CROWN.

# QUEEN'S BENCH.

civil corporations visited by, 530.

# QUI PRIOR EST TEMPORE POTIOR EST JURE, 713, 862.

# QUORUM, 260.

# RAILWAY DEBENTURES OR MORTGAGES.

investment in, by trustees, when authorized, 312, 319, 320, 326.  
foreign railways, 322.

# RAILWAY SHARES.

notice on assignment, of, 705 note (a).  
retention of, by executors, when justifiable, 289, 300.

# RATEPAYERS. See PARISHIONERS.

# RATES.

tenant for life must pay, during his life, 683.  
trust in aid of, when constituted, 532.  
trustees liable to, unless holding exclusively for public purposes, 235.

# REAL PROPERTY LIMITATION ACT, 1874, 875 *et seq.*

# REAL SECURITIES.

investment in, by trustees, 308, 312, 313. See INVESTMENT; MORTGAGE.

# REALTY.

conversion of, by trustee, 963. See CONVERSION.  
costs payable out of, 644.  
distinction between, and *choses in action*, as regards doctrine of notice, 704, 705.  
effect of blending, into one fund with personalty in a will, 150, 159.

# REASONS.

trustees need not assign, for exercise of their discretion, 615.

# REBUTTER.

advancement, of intention of, 176.  
presumption of law, of, by parol evidence, 147. See RESULTING TRUST.  
purchase in name of stranger, of presumption arising on, 171.

# RECEIPT.

administrator, of, after lapse of time, 481, 482.  
where there is a charge of debts, 467, 468.  
agent or attorney, signed by, 453.  
purchaser from trustee not in general discharged by, 447, 448.  
assignee, by, when a sufficient discharge, 346.  
breach of trust, receipts of trustees intending to commit, 457, 459, 481 *et seq.*  
receipt whether effectual after commission of, 472.  
cestui que trust abroad, in case of, 476.

[The paging refers to the [\*] pages.]

**RECEIPT**—*continued.*

- charge of debts**, power to give receipts implied by, 461 *et seq.*
  - who are empowered to give receipts by virtue of, 461 *et seq.*
  - devisee, under beneficial devise with charge of debts, 464.
    - concurrence of executor whether necessary, 465.
  - executor, where devise is to trustees, 461.
    - where no devise of estate, 465 *et seq.*
    - where simple devise lapses, 468.
    - where estate subjected to various limitations, 468, 469.
  - heir cannot give good receipt, *semble*, 465, 466.
  - tenant for life, concurrence of, whether necessary under Settled Land Act, 470.
  - trustee, where estate devised to him, 461 *et seq.*
    - concurrence of executor whether necessary, 463 *et seq.*
- chattel**, on sale of, purchaser not bound to see to application of purchase-money, 477, 478.
  - except in cases of fraud or collusion, 478 *et seq.*
- co-administrators** on some footing as co-executors, 273.
- co-executor** liable for joining in, 256, 268.
  - unless his joining be nugatory, 269.
  - or *ex necessitate*, 272.
- conformity**, trustee joining in receipt for sake of, not liable, 264, 265, 292.
  - but rule more restricted than formerly, 292 note (c).
- co-trustees.**
  - all must join in giving receipt, 259, 471.
    - even co-trustee who has conveyed estate to the others, 471.
    - secus* co-trustee who has disclaimed, 471.
  - co-trustee joining but not actually receiving money not liable, 264, 265.
    - unless he permits money to lie in hands of co-trustee, 265 *et seq.*
  - joint receipt conclusive at law of actual receipt, 265.
    - onus probandi* that co-trustee did not receive money, 265.
- devisee**, of, purchaser when discharged by, 465, 469, 470.
- executor**, of, purchaser when discharged by, 466, 467, 477 *et seq.*, 597.
- executory trust** silent as to powers whether it authorizes power to give receipts, 126 note (g).
- guardian of infant** of, of, when a good discharge, 355.
- heir at law**, of, purchaser when discharged by, 465, 466, 468, 471.
- husband of married woman**, of, when required, 34, 36.
- infant**, of, representing himself to be of full age, 355.
- in full of all claims**, effect of, 358.
- insurance monies**, for, 292, 293, 453 note (b).
- investment**, power of, whether power to give receipts implied by, 460.
- liability for joining in**, 264, 265. See *supra*, co-executor, co-trustees.
- married woman**, of, who is trustee, 34, 36, 474.
- mortgagee**, statutory power of, to give receipt, 451.
- official trustees of charitable funds**, of, 361.
- partner**, of, 355.
- power to give receipts.**
  - delegation of, 471.
  - express, effect of, 453.
  - extraneous monies, does not extend to, 474.
  - implied by charge of debts, 461 *et seq.* See *supra*, charge of debts.
  - implied by direction for immediate sale, 454.
    - ex gr.* when present distribution of proceeds cannot be made, 454.
    - or *c. q. t.* are infants, 454.
    - quære* as to *c. q. t.* abroad, 455.
  - implied by power of investment and varying securities, 460.
    - but not by mere power of sale and exchange, 460.

[The paging refers to the [\*] pages.]

# RECEIPT—*continued.*

implied by special trust annexed to purchase money, 455.

*ex gr.* to pay debts, 456.

or debts and legacies, 456; even though purchaser knows debts are paid, 458, 459.

*secus*, where for particular debts, 456; or legacies only, 457.

implied on assignment of policy by way of mortgage, 453 note (b).

intention of settlor at date of instrument, depends on, 458.

statutory power, 293, 451, 452.

subsequent events or lapse of time, not affected by, 458 *et seq.*

title, is question of, 453 note (a).

## purchaser when discharged.

executors, by receipt of, 466, 467, 477 *et seq.*

principle on which purchaser required to see to application of money considered, 452, 453, 475, 476.

several capacities, where vendor is interested in, 476.

several purchasers, practical directions where there are, and no power to give receipts, 475.

trustees, by receipt of, 292, 447, 448, 450 *et seq.*

rent, for, evidence that covenants in lease performed, 439.

single trustee, of, when sufficient, 355, 356.

statutory power to give, 293, 451, 452.

tenant for life, concurrence of, when necessary under Settled Land Act, 470.

time, lapse of purchase from administrator or executor after, 481, 482.

from trustee after, 457.

power to give receipts a question of intention at date of deed, 458.

## trustees.

actual receipt of purchase money by, whether essential, 447, 448.

appointed by Court, their power to give receipts, 471, 472.

assignee of, whether he can give receipts, 471, 472.

breach of trust, whether receipts effectual after, 472.

or if given by trustee intending to commit breach of trust, 294.

executor or administrator of, whether he can give receipts, 483, 484.

married woman, who is, whether she can give receipts, 474.

purchase money, whether they must actually receive, 473, 474.

pure personalty, distinction between, and monies payable on sales or mortgages, whether there is, 292, 293.

signature of, must be of all trustees, 257, 471.

signature of, trustees bound though money not actually received, 288.

statutory power of, to give receipts, 293, 451, 452.

stock, trustee entitled to receive, cannot give receipt for cash, 453.

where no money passes to trustee, 473.

varying securities, power of, implies power to give receipts, 460.

# RECEIVE.

trust money, how trustees should, 288, 291, 292, 473, 474.

trustee may receive money before due, 288.

# RECEIVER. Chap. XXXII, sect. 4, 982—994.

abroad, where trustee or executor is, when appointed, 983, 984.

appointment of, by Court, at instance of *c. q. t.* 982, *et seq.*

where all concur, 982.

where individual *c. q. t.* applies to the Court, 982.

not appointed on slight grounds, 983.

where tenant for life allows property to fall into disrepair, 238.

at instance of judgment creditor, 813 *et seq.*

bankruptcy or insolvency of trustee, a ground for appointment of, 982.

creditors' action, in, where executor threatens to prefer one creditor, 856.

danger to trust estate, a ground for appointment of, 856, 952.

[The paging refers to the [\*] pages.]

# RECEIVER—*continued.*

- depositing trust money in bank, held liable, 296.
- disagreement by trustees, a ground for appointment of, 983.
- discharge of, not ordered at mere instance of party procuring appointment, 984.
- except where the purpose has been answered, 984.
- disclaimer by one trustee, not a ground for appointment of, 983.
- drunkenness of executor, when a ground for appointment of, 983.
- equitable execution by appointment of, 813, 814.
- whether *elegit* must be actually sued out, 814, 815.
- expense of, falls on tenant for life, 984.
- incapacity of trustees to act, a ground for appointment of, 982, 983.
- infant cannot be appointed, 37.
- interest, charged with, for improper retainer, 338, 339.
- leaseholds, of, to provide for renewal fine, when appointed, 378, 379, 854.
- Limitations, Statutes of, whether he is express trustee within, 885 note (e).
- married woman, of separate property of, at instance of creditor, 771.
- where executrix is, and husband resident abroad, 983.
- misconduct of trustee, a ground for appointment of, 982, 984.
- poverty of trustee or executor, when a ground for appointment of, 983.
- purchase by, of trust estate, not permitted, 486.
- remainderman, appointed on application of, 854.
- remuneration of, priority of, 984, 987.
- renewable leaseholds, of, where tenant for life neglects to renew, 854.
- security to be given by, 813.
- when dispensed with, 814.
- time or trouble, he cannot charge for, 628.
- trustee cannot be appointed at a salary unless mere trustee to preserve contingent remainders, 280.

# RECITAL.

- correctness of, when to be presumed, 438, 439.
- declaration of trust may be proved by, 56.
- false, effect of, 685, 989.
- notice by, of surrender of former lease, 185.
- trustee executing deed should see that recitals are correct, 201, 685.

# RECOGNIZANCES.

- purchasers, how far bound by, 809.
- receiver, by, 982.

# RECOMMENDATION.

- words of, whether sufficient to raise implied trust, 130 *et seq.*, 641.

# RECONVERSION.

- election of *c. q. t.*, by virtue of, 953 *et seq.* See ELECTION.
- implied trust for, 433, 434.
- lunatic's property, of, 964.

# RECONVEYANCE, 685, 966, 1019. See MORTGAGE.

# RECORD.

- disclaimer by matter of record not necessary, 199.

# RECOVERY.

- contingent remainder formerly defeated by means of, 380.
- equitable entail, its effect on, 694.
- how it must have been suffered, 694.
- infant, of, formerly only reversible during nonage, 25.
- lunatic or idiot, of, formerly valid unless reversed, 26.
- trustees to preserve, when they could have prevented, 381.
- vacation, could not be suffered in, 957

[The paging refers to the [\*] pages.]

# RECREATION GROUND.

conveyances for, exempted from Mortmain Act, 97.

# RECTIFICATION.

appointment of new trustees, of, 663.  
settlement, of, 113. See SETTLEMENT.

# REDEMPTION.

action for, when barred, 866.  
wilful default need not be alleged, 905.  
equity of, 248. See EQUITY OF REDEMPTION.

# REDEMPTION OF LAND TAX.

of lunatic's estate, may be effected from proceeds of timber, 964.

# REDUCTION.

married woman's *choses in action*, reduction of, into possession, 24, 739 *et seq.*, 745. See MARRIED WOMAN.  
salaries, of, power of trustees as to, 538.  
trust property, of, into possession, duties of trustees as to, 287 *et seq.*

# REFERENCE.

words of, creation of charges by, 130.  
creation of trusts by 506, 507.

# REFUND.

legatee when bound to, 356, 357.

# REFUSAL.

trustees, by, to act, 647, 656; how remedied under Trustee Acts, 1022 *et seq.*, 1041 *et seq.*  
to convey or transfer at request of *c. q. t.*, 685, 686, 692.

# REGISTRATION.

breach of trust by neglecting to effect, 904.  
Crown debts, of, 809.  
deeds, &c., of, in register counties, 500, 501, 816.  
designs, of, 167.  
incorporation of charity trustees, of, 547, 548.  
judgments, of, 500, 804, 809, 812, 816. See JUDGMENT.  
patents, of, 167.  
shares, of, after notice of trust, 859.  
ships, of, 166.  
trade marks, of, 167.

# REGULATION OF FORCES ACT, 1871, 708.

# REIMBURSEMENT, 634 *et seq.* See EXPENSES; LIEN.

# RELATIVE.

*cestui que trust*, of, should not be appointed trustee, 41, 666.  
meaning of term "relations," 133, 134, 836, 837.  
"poor relations," bequest in favour of, how construed, 836 note (1), 843.  
power to appoint amongst relations, how construed, 842 *et seq.*  
how executed by Court, 843 *et seq.*  
trust for relations, how construed, 133, 134, 836.  
trustee, relative is not desirable as, 665.  
trustees, whether they should grant leases to their relatives, 542.

# RELATORS.

necessary in information on account of costs, 927.

# RELEASE.

assignee having power to give receipts can call for payment without tendering, 346.  
breach of trust, in respect of, by *c. q. t.*, 924 *et seq.*  
by married woman or infant, 925, 926.  
*cestui que trust*, by, in ignorance of his rights, 185, 186, 926.

[The paging refers to the [\*] pages.]

**RELEASE**—*continued*.

- consideration, what sufficient for, 925.
- co-trustee, of one, discharges other, 915; *secus* as to covenant not to sue, 915.
- creditor, by, by accepting composition, 521, 522.
- debts, power of trustees or executors to release, 591, 592.
- equity of redemption, whether trustee may release, 593.
- executor entitled to, on final settlement of accounts, 358.
- married woman, by, of her equity to a settlement, 741.
- of power, 783, 955.
- mortgage security, release of part of, whether trustees may make, 593.
- power, of, under Conveyancing Act, 1881, 610.
- presumption of, when made, 870.
- principal, of, discharges surety, 934.
- seal, under, its effect and whether trustee may require, 358.
- trust, from, how trustee can obtain, 251. See RELINQUISHMENT.
- trustee**, expense of release to, and by whom prepared, 359.
  - paying under direction of Court not entitled to release, 359.
  - paying to other trustees, whether release can be required by, 359.
  - release by, of part of security, 593.
  - release by, with intention of disclaiming, operates as disclaimer, 608.
  - right of, to demand release, 358; under seal or not, 358.
- validity of, determined on hearing of originating summons, 350.
- void transaction, in respect of, invalid, 924.

**RELIEF.** See TRUSTEE RELIEF ACTS.

**RELIGION.**

- established, when Court executes trust in favour of, 533.

**RELIGIOUS BODY.**

- trust in favour of, how construed and administered, 533 *et seq.*

**RELIGIOUS DOCTRINE.**

- trustee of charity for preaching, should hold same, 42.

**RELINQUISHMENT OF TRUST.** Chap. xxv., 645—673.

- Bankruptcy Act, when new trustee appointed on petition under, 850, 1027, 1028.
- consent, by, of all *c. q. t. if sui juris* and *in esse*, 645.
- Court, by application to, 846.
  - by representative of deceased trustee, 673.
  - where no new trustee can be found, 671.
- application how made and costs of, 669, 672, 847, 848.
- power, by virtue of special, 646, 654 *et seq.*; statutory, 647 *et seq.*

**REMAINDER, CONTINGENT.** See CONTINGENT REMAINDER.

**REMAINDERMAN.** See TENANT FOR LIFE.

- acquiescence by, 379, 923.
- copyholds, of, fine payable on admission of, 236.
- costs of appointing additional trustee at instance of, 1029.
- election by, when effectual, 956, 957. See ELECTION.
- equity of redemption, of, when time runs against, 866.
- Limitation, Statutes of application of, as against, 866, 873, 875, 876.
  - whether sect. 25 of 3 & 4 W. 4, c. 27, abridges right of *c. q. t.* in remainder, 876, 877.
- possession to be given to, on cesser of particular estate, 686.
  - on giving security as to back rents, *ib.*
- prepayment to, when authorized by Court, 140.
- remedy of, by action, to have number of trustees filled up, 846.
  - for appointment of receiver, 854.
- renewable leaseholds, of, apportionment of fines between him and tenant for life, 371 *et seq.*

[The paging refers to the [\*] pages.]

# REMAINDERMAN—*continued*.

compensation to remainderman, where tenant for life has neglected to renew, 370, 379.

laches not imputable to him during life of tenant for life, 379.

remedy of, where tenant for life neglects to renew, 854.

service on, under Trustee Relief Act, when necessary, 1001, 1004.

Settled Land Acts, position of, under, 556, 557, 559, 565, 566.

trustee must not favour tenant for life at expense of, 291, 317, 318, 333.

wilful default, cannot sue for, in respect of prior estate, 906.

# REMEDY.

cestui que trust, of, is in Chancery, 16.

not in common law Court for breach of implied contract, 17.

not in spiritual Court, 17.

for breach of trust, 857 *et seq.* See BREACH OF TRUST.

trustee, of, in case of breach of trust—

against *c. q. t.*, 370, 371, 910.

against co-trustee, 273, 274, 847.

where construction of trust doubtful, 352.

# REMOTENESS.

trust when void for, 89, 97. See PERPETUITY.

# REMOVAL.

charity, of officer of, possession how recoverable on, 537.

trustees, of, 846 *et seq.*, 1028, 1038. See NEW TRUSTEES.

# REMUNERATION.

contract by trustee for, 631, 632.

specific allowance for, does not exclude allowance for expenses, 637.

# RENEWABLE LEASEHOLDS, 180 *et seq.* Chap. xv., 363—379.

account of rents and profits against trustee of, 185.

accumulations for renewal, who entitled to, when renewal cannot be obtained, 370.

Acts of Parliament, renewals under, 365.

agent of trustee, cannot renew for his own benefit, 182.

articles for settlement of, direction for renewal implied in, 365.

charges, trustee making renewal impossible by his own act is bound to give effect to, 187.

charity lands, tenant of, cannot demand renewal, 544.

conveyance of, to trustees and their heirs upon trust for A., A. takes absolute interest, 109.

covenant for perpetual renewal, devisees in trust not bound to enter into, 442 note (*i*).

discretionary power to renew, construction of, 365.

“it shall be lawful for trustees to renew,” 365.

# finances and other expenses on renewal, 366 *et seq.*

annual rents, whether to be raised out of, or by mortgage, 366 *et seq.*

where fund pointed out by settlor, 366 *et seq.*

where no direction by settlor, 371 *et seq.*

apportionment of, how made, 371 *et seq.*

actual enjoyment, tenant for life and remainderman pay in proportion to 373.

Court will not act on speculative calculations, 372.

leaseholds for lives, in case of, 374 *et seq.*

leaseholds for years, in case of, 371 *et seq.*

compound interest allowed tenant for life on his share, and for what period, 373, 374.

tenant for life having had no enjoyment does not pay, 374.

contribution to, 372.

annuitant, whether bound to contribute, 184, 185.



[The paging refers to the [" ] pages.]

# RENEWABLE LEASEHOLDS, fines, &c., on renewal—*continued*.

- security for, given by tenant for life, 374, 377, 378.
- leaseholds for lives, in respect of, how to be raised, 366 *et seq.*
- annual rents and profits, whether out of, 368, 369.
- raising by way of insurance, 369, 370.
- leaseholds for years, in respect of, how to be raised, 366 *et seq.*
- “out of rents and profits,” 366, 369.
- “out of rents or profits or by mortgage,” 367 *et seq.*
- lien of tenant for life for, 184, 371, 377.
- lien of trustee for, 184.
- mortgage, when and how to be raised by, 367 *et seq.* 371.
- tenant for life of reversion when entitled to, 682.
- incumbrances created by trustee must be discharged by him, 185.
- indemnity, right of trustee to, on assigning renewed lease to *c. q. t.*, 185.
- joint tenant, renewal by, in own name, 181.
- liability of trustees and tenant for life neglecting to renew, 363 *et seq.*, 378.
- Limitations, Statutes of, run in favour of devisee renewing, 878.
- mortgagee, renewal by, in own name, 181.
- he cannot hold for his own benefit unless renewing *bond fide* with full notice to mortgagor, 181, 183.
- notice of intention to renew, sufficient if served on one trustee, 259.
- obligation to renew, 363 *et seq.*
- partner, renewal by, in own name, 181.
- person renewing lease in own name, when a constructive trustee, 180 *et seq.*, 363, 378.
- reversion tenant for life of, when entitled to fines, 682.
- trustee purchasing, held a constructive trustee, 186.
- trustee when empowered or bound to purchase, 366, 370.
- right of renewal, trustee may not sell, 182.
- where corporation being lessors have sold to an individual, 187.
- statutory power of renewal, 365.
- successive estates, obligation to renew not necessarily imposed by limitation of, 363, 364.
- tenant at will or at sufferance, renewal by executor of, 182.
- tenant for life, renewal by, in own name, 181.
- or other person having limited interest, 181, 182.
- where holding on yearly tenancy, 181.
- when regarded as trustee, 363, 378.
- when liable for renewal fines, 370.
- trustee, renewal by, 180 *et seq.*
- he cannot renew for his own benefit, *ib.*
- even though landlord refuse to renew to *c. q. t.*, 183.
- nor sell right of renewal, 182.
- remedy of *c. q. t.* against purchaser and others claiming under trustee, 185.
- statutory powers of, as to renewal, &c., 365, 366.

# RENTS AND PROFITS.

- account of, when directed by Court of Equity, 885 *et seq.*
- charity, against trustees for, 934 *et seq.*
- complicated, where account is, 886.
- death of accounting party, whether directed after, 886.
- dowress, in action by, 890, 891.
- equitable title, where plaintiff recovers on, 888, 891.
- form of order for, 890.
- fraud, in case of, 888, 891.
- infant, in action by, 886, 888, 890, 891.
- legal title, in respect of, 886, 890, 891.
- mines, in respect of, 886.

[The paging refers to the [\*] pages.]

# RENTS AND PROFITS—*continued.*

- mistake, in cases of, 887, 889.
- mortgagor, against, 345.
- period from which account directed, 887.
- tenant for life, against, 371. See **TENANT FOR LIFE**.
- timber, in respect of, 886.
- trustee, against right of *c. q. t.* to 674.
- trustee, against, who has purchased trust estate, 491.
- accumulation of, 89 *et seq.* See **ACCUMULATION**; **THELLUSON ACT**.
- adverse possessor *bonâ fide*, what account directed against, 888, 889, 891.
- arrears of rent, security for, when possession delivered to remainderman, 686.
- what recoverable under Statutes of Limitation, 875, 882 *et seq.*, 890.
- assignee of trustee, account against, 890.
- cestui que trust in receipt of, is bailiff of trustee, 881, 882.
- charitable trusts, account when directed in case of, 934 *et seq.*
  - compromise with Attorney-General, 935.
  - inconvenience, bar to account from, 934.
  - mistake of trustees, effect of, 936.
- charity estate, of, increasing surplus, how applied, 161, 162.
- commission on receipt of, when allowed, 632.
- constructive trustee, account against, when directed, 185, 886 *et seq.*
  - accruer of title, *primâ facie* from time of, 889.
  - but not further back than six years before institution of suit, 887, 889.
  - when directed only from institution of suit, 888, 889.
    - adverse possession *bonâ fide*, in case of, 888.
    - lashes, in case of, 889.
- conversion of estate, prior to, tenant for life receives, 949.
- direction to pay, whether conferring right to enjoyment of leaseholds in specie, 299.
- dowress allowed to proceed in equity on legal title, 890.
- executor when accountable for, 886.
- express trust, in cases of, account runs from time when rents withdrawn, 888.
  - secus* where trustee ignorant of his true character, 889.
- fee simple, "rents and profits" when equivalent to, 419, 420.
- form of order to account for, 890.
- fraud, a ground for ordering an account of, 888, 891.
- impounding, to procure renewal of lease, 379.
- infancy of plaintiff, a ground for ordering an account of, 886, 888, 890.
- lashes, in cases of, from what time account directed, 889.
- Limitations, Statutes of, right to account how affected by, 889, 890.
- meaning of term, 419, 420.
- mortgagee in possession, how far accountable in respect, 190, 191.
- mortgagor, when accountable for, 345.
- occupation rent, trustee when charged with, 491.
- person to account, 890.
- portions when raisable out of, 419, 420.
  - raisable out of, when vesting, 399, 400.
  - interest not allowed on, 410.
- purchase by trustee for sale account of profits on, 491.
- rack rent, trustee occupying charity land charged with, 542.
- receipt of, by one co-trustee, 225, 260.
- renewal of lease, liability of trustee to account, 185.
  - finances for, when to be paid out of rents, 366 *et seq.*
- repairs, trust to apply rents in making, 577.

# RENUNCIATION.

- probate, of, 197, 201, 202, 223. See **EXECUTOR**.
- trust of, not permitted after acceptance, 251, 252.

[The paging refers to the [\*] pages.]

## REPAIRS.

- allowance for, when made to trustees, 491 *et seq.*, 544, 546, 574, 575 *et seq.*  
upon setting aside purchase by trustee for sale, 491, 492.  
to tenants of charity lands, 544.
- chapel, trust for repairing, effect of, 538.
- direction to keep in repair, how to be carried into effect, 575, 576.
- infancy of beneficial owner, may be executed notwithstanding, 575, 578.
- infant's lands upon, may be made out of his personality, 968.  
or by mortgage or sale of realty, 968, 969.
- lunatic's lands, upon, may be made out of his personality, 966. See LUNATIC.
- rebuilding, whether authorized by power to repair, 576.
- tenant for life, by, are his own voluntary act, 574.  
neglecting to repair, cannot be interfered with by trustees, 574.
- trust to apply rents in making, is a special trust, 577.
- trustee, when justified in applying trust money for, 504, 574, 575 *et seq.*

## REPAYMENT.

- trustee or executor, to, when ordered, 356.

## REPUGNANCY.

- gift over when void for, 10.

## REPUTED OWNERSHIP, 242 *et seq.* See BANKRUPTCY.

## REQUEST.

- direction for conversion upon, held imperative, 948.
- purchase to be made at, 948.
- sale to be made at, 429, 430.
- words of. when held to give rise to a trust, 131 *et seq.*

## "REQUIRED."

- to lend, 317, 614.
- to purchase, 328.

## RE-SALE.

- of property purchased by trustee for sale, upon what terms ordered, 492, 493.

## RESERVED BIDDING.

- assignee selling for less than the, 434.

## RESIDUE.

bequest of—

- accumulation void under Thellusson Act passes under, 92.
- ademption and satisfaction, doctrines of, apply to residuary gifts, 405.
- lapsed or void legacy out of proceeds of sale of lands when passing under, 159, 160.
- portion, is regarded as satisfaction of, 405.
- resulting trust of proceeds of sale of land does not pass under, 159.  
unless such proceeds directed to be taken as personal estate, 159.
- charity, gift to, apportioned as between pure and impure personality, 951.
- construction of word "residue" as to real estate, 155, 156, 158, 159.
- conversion of, where given to persons in succession, 298 *et seq.* See CONVERSION.
- devise of, effect of, 155, 156, 158, 159.  
accumulations void under Thellusson Act, whether passing under, 92.  
resulting trust in real estate whether passing under, 159.  
trust estate, whether passing under, 226 *et seq.*
- devisee of, takes under devise or trust, where no trust defined by will, 59.
- distribution of estate, 358, 592, 593.
- "executor, residuary," meaning of, 159.
- executor who is residuary legatee, powers of, 479, 480.

[The paging refers to the [\*] pages.]

# RESIDUE—continued.

- legatee of, and next of kin, distinction between claim of, to undisposed of interest in converted property, 160.
- legatee of, overpaid, when bound to refund, 356, 357, 592.
- legatee of, takes under present law in case of specific bequest with insufficient declaration of trust, 60.
- settlement with one of many residuary legatees, effect of, 357, 592.
- tenant for life of, and remainderman, relative rights of, 298 *et seq.* See CONVERSION.

# RESIGNATION.

- incumbent, of, stipulation for, illegal, 105.

# RESTRAINING ORDER. See CHARGING ORDER; DISTRINGAS.

- under 5 Vict. c. 5, sect. 4, 971 *et seq.*
- practice as to, 972.
- special grounds necessary for obtaining, 974.
- transfer into Court ordered notwithstanding, 982.

# RESTRAINT.

- alienation, against, 98, 99.
- bad generally as regards equitable estates, 98 *et seq.*, 689, 693.
- lease, in, how it affects powers of Court to make vesting order without landlord's consent, 1031 note (d).
- anticipation of income by married woman, against, 693, 781 *et seq.* See MARRIED WOMAN.

# RESULTING TRUST.

- Act of Parliament, in evasion of, not implied, 166.
- advancement, presumption of, on voluntary conveyance to wife or child, 144.
- or purchase in name of wife or child, 170 *et seq.* See ADVANCEMENT.
- appointed fund results to donee of power, 153.
- charge, distinction between, and partial trust, 146; or exception from gift, 154.
- on failure of charge devisee takes benefit, on failure of trust heir takes, 154.
- charities, in gifts to, 161, 162. See CHARITY.
- chattel interest resulting to heir devolves on heir's personal representatives, 143.
- chattels, on delivery of, when it arises, 145.
- consideration, nominal, will not prevent, 144.
- conveyance of property without consideration, upon, 144.
- to wife or child, presumed to be an advancement, 144.
- by son to father to facilitate raising of money, 144.
- costs and expenses, direction that devise shall be allowed, 149.
- Crown, in favour of, when it arises, 22, 161.
- death of settlor intestate and without heir or next of kin, in case of, 161.
- descent of, follows course of descent of legal estate, 823.
- executor, for, when it arises, 143.
- grantor, for, when it arises, 143, 284.
- heir at law, for, when it arises, 143, 149.
- heir not to be excluded on mere conjecture, 147.
- intention of settlor governs decision as to, 146.
- investment in names of trustees of marriage settlement does not give rise to, 145.
- joint tenants, on voluntary conveyance by, equitable interest results in joint tenancy, 144.
- land devised on trust to sell, undisposed of proceeds result to heir not to executor, 149.
- notwithstanding direction that proceeds shall be considered personalty, 150.
- or that "nothing shall result to the heir at law," 150.

[The paging refers to the [\*] pages.]

# **RESULTING TRUST**—*continued.*

- whether resulting interest devolves as realty or personalty, 150, 151.
- where trusts entirely fail, devolves as realty, *secus*, where partially, 151.
- legal estate, by conveyance or other disposition of, without disposing of equitable interest, 143 *et seq.*
- Limitations, Statutes of, when an express trust within, 877.
- marriage settlement, under, whether it arises, 145.
- mistake by grantor, grantee not permitted to take advantage of, 145.
- money to be laid out in land**, undisposed of interest in, results to next of kin, 152.
- who take as realty or personalty according to the nature of the property in equity at the time when it results, 152.
- Papistry Acts, resulting trust not presumed where forfeitable under, 167.
- parol evidence when admissible to rebut presumption of, 59, 60, 147 *et seq.*
- partial trust, declaration of, distinguished from charge, 146.
- on declaration of, equitable interest undisposed of results, 146.
- where words raise, by implication, surplus does not result, 137.
- Patents, Designs and Trade Marks Act, 1883, effect of, 167.
- personal estate, effect of residuary bequest of, 160.
- policy, under settlement of, providing that bonuses should not vest in trustees, 701.
- presumption, by, of intention of settlor, to exclude legal owner from enjoyment, 144.
- presumption of, how rebutted, 59, 60, 147 *et seq.*, 170.
- where trust appears on face of will, 65.
- purchase in name of child, wife, or near relative**, 170 *et seq.* See **ADVANCEMENT.**
- raises presumption of advancement, 170, 171.
- but such presumption may be rebutted by evidence tending to support resulting trust, 175, 176.
- purchase in name of stranger**, 163 *et seq.*; resulting trust generally created by, 163.
- copyholds for lives, how far rule applies to purchase of, 165.
- joint purchase, the rule applies to, 164.
- where purchasers contribute equally, joint tenancy implied, 164.
- where unequally, tenancy in common, 165.
- Papistry Acts, effect of, 167.
- parol evidence, purchase provable by, though otherwise expressed in deed, 167.
- or against defendant's denial, 168.
- or after death of nominal purchaser, *semble*, 168, 169.
- but evidence must be clear, 168; but may be circumstantial merely, *ib.*
- secus* where purchase by agent and no money paid by principal, 168.
- parol evidence to rebut presumption, admissible, 169.
- subsequent declarations, effect of, 170.
- purchase in evasion of Act of Parliament or for giving votes, no trust implied on, 167, 168.
- ship, purchase of, in name of stranger, 166, 167.
- tenancy in common implied in case of joint loan, 164.
- or where two possessed of mortgage term purchase equity of redemption, 164.
- unequal contribution by purchasers, effect of, 165.
- relationship of parties, how far a material consideration, 146, 147.
- sale, trust for, as to proceeds undisposed of under, 149.
- secret trust for charity, where donee agrees to hold upon, 63.

[The paging refers to the [\*] pages.]

# RESULTING TRUST—*continued*.

- settlor, for, when it arises, 143.
- on death of *c. q. l.* intestate and without heirs, *quære*, 284.
- ship, of, formerly not implied, 166 ; *secus* since recent Acts, 166, 167.
- stock, on transfer of, 145.
- technical phraseology not regarded in face of contrary intention, 146.
- time, effect of, in barring presumption, 171.
- "trust," conveyance upon, and no trust declared, 148.
- "trust" and "trustee" do not necessarily exclude a beneficial gift, 148.
- uncertainty of objects of trust, in case of, 133.
- unlawful trust, on failure of, settlor may recover property, 106.
- unlawful trust, secret engagement to hold upon, resulting trust for heir-at-law, 63.
- voluntary conveyance, under, 144.
- conveyance of *whole* estate to stranger, as to effect of, *quære*, 144 note (*b*).
- votes, on purchase for giving, not implied, 167.
- will**, where no trust appears on, and no fraud, devisee takes beneficially, 59.
- but where devisee is made by will a trustee but no trust declared beneficial interest results, 59, 60.
- where trust for stranger declared by parol, 64, 65.
- written instrument, trust resulting under, cannot be rebutted by parol, 149.

# RETAINER.

- charity fund, of, by trustee, in own hands, 539.
- executor, by, of balance improperly, 992.
- of costs, 986.
- of statute barred debt, 590.
- of surplus estate, 338.
- executor's right of**, not affected by abolition of distinction between specialty and simple contract debts, 831.
- but ceases upon administration of estate in bankruptcy, 832.
- heir at law or devisee, right of, to retain debt how affected by 3 & 4 Will. 4, c. 104, 830, and note (*d*).
- investment, of, by trustees, 290 *et seq.*, 328. See **CONVERSION ; INVESTMENT**.
- personal representative of insolvent trustee, by, 906.
- receiver, by, of rents in his hands, 339.
- solicitor, of, by married woman, 762.
- trust funds, of, by trustees in bankruptcy, 338.
- by one trustee, co-trustee should not permit, 292.
- trustee, by, of beneficial interest under the trust, 911, 912.

# RETIREMENT.

- representatives of trustee, right of, to retire from trusteeship, 672, 673.
- trustee of, from office, Chap. XXV., 645—673 *et seq.* See **RELINQUISHMENT ; NEW TRUSTEES**.
- as to part only of trust, 667.
- in consideration of premium or in favor of trustee who intends to commit breach of trust, 668.
- where no new trustee can be found, 671.
- where trust has become complicated, 672.

# RETIRING TRUSTEE. See **NEW TRUSTEES**.

- concurrence of, in appointment of new trustee, not necessary, 663, 664.
- duty of, to see that new trustee is appointed, 653 *et seq.*, 662.
- inquiries to be made of, 670, 706.
- meaning of term, 668.
- power of, to appoint new trustees, 664.
- trustee paying fund into Court under Trustee Relief Act is a, 999.

[The paging refers to the [\*] pages.]

## REVERSION.

- Bankruptcy Act affects chattels in, 244.
- chose in action*, reversionary, duty of trustees as to getting in, 288.
- married woman's, rights of husbands in respect to, 740, 745.
- conversion of, in favor of tenant for life, 305.
- investment by trustees on mortgage of, 328.
- lashes, effect of, in suit to set aside purchase of, 872.
- legacies paid out of, what interest payable in respect of, 305.
- Limitations, Statute of, operation of, as against reversioner, 866, 873, 875, 876. See REMAINDERMAN.
- married woman, of, 740, 745, 955,
- mortgage of, whether trustees may lend on, 328.
- order and disposition clause applies to, 244.
- portions how and when raised out of, 412.
- purchase of, by father in name of child presumed to be an advancement. 171.
- purchase of, by trustee, improper, 505.
- by trustee of leasehold interest, effect of, 186.
- purchase-money of, apportionment of, as between tenant for life and remainderman, 305, 565, 566.
- renewable leaseholds, of, how far trustee purchasing is constructive trustee, 186.
- power and duty of trustee to purchase, 366, 370.
- sale of, by trustee concurring with owner of prior estate, 430.
- separate use as to, effect of, 779.
- tenant for life of, rights of, as regards income, 682.
- title to, when to be deduced to purchaser, 439, 440.
- trustee purchasing, when a constructive trustee, 186.

## REVERSIONER. See REMAINDERMAN.

## REVOCABLE.

- trust, 22, 516. See DEBT, trust for payment of.

## REVOCATION.

- power of, given to trustees by name does not survive, 612.
- voluntary settlement, of, by sale for value, 75, 76.
- not by subsequent voluntary deed, 75.
- will of, 722.

## ROAD BONDS, investment in, 326,

## ROBBERY.

- trust property, of, trustee when liable for, 294,

## ROMAN CATHOLIC CHARITIES, 549.

## ROMILLY'S ACT (52 Geo. 3, c. 101), 927 *et seq.*

- construction of, 927.
- new trustees of charity, appointment of, under Act, 851, 852, 929.
- proceedings under, 851, 927 *et seq.*

## RULES OF COURT, 1883.

- O. xi. . . 759.
- O. xi. r. 1 . . 49 note.
- O. xvi. r. 16 . . 474, 759.
- O. xvi. rr. 48 *et seq.* . . 910.
- O. xvi. r. 5 . . 5910.
- O. xix. r. 3 . . 699.
- O. xix. r. 4 . . 352, 618.
- O. xix. r. 15 . . 55, 869, 887.
- O. xxii. rr. 17, 18 . . 311.
- O. xxv. r. 5 . . 352, 869.
- O. xxxii. rr. 17, 18 . . 308, 309.

[The paging refers to the [\*] pages.]

# **RULES OF COURT, 1883—continued.**

- O. xxxiv. r. 2 . . . 352.
- r. 8 . . . 352.
- O. xlv . . . 815.
- O. xlvi. r. 1 . . . 807.
- O. xlvi. rr. 2 *et seq.* . . . 712, 973, 974.
- O. xlvi. rr. 12, 13 . . . 712.
- O. lii. rr. 19 *et seq.* . . . 618.
- O. lv. r. 1 . . . 986, 987, 1038.
- O. lv. r. 2 . . . 1034.
- O. lv. r. 3 . . . 617, 620.
- O. lv. rr. 3, 4, 5 . . . 350, 352.
- O. lv. r. 12 . . . 620.
- O. lv. r. 63 . . . 526.
- O. lxv. r. 1 . . . 994.
- O. lxv. r. 2 . . . 1027.
- O. lxv. r. 26 . . . 18.
- O. lxv. r. 27 (19) . . . 1002.
- Supreme Court Funds Rules, 1884, 1005.

# **ST. LEONARDS' (LORD) ACT (22 & 23 Vict. c. 35). See STATUTES.**

- advertisement for creditors under, 362.
- charge of debts or legacies, effect of, 464, 467 *et seq.*
- investment under, 307.
- petition under, for advice, &c., 352, 618 *et seq.*
- power of attorney, trustee paying under, when exempt from liability, 354.
- receipts, power of trustees, &c., to give, 451.

# **SALARIES.**

- augmentation and reduction of, by governors of charities, 538.

# **SALARY.**

- allowance of, to trustee, 631, 632.
- does not cease on institution of suit, 631.
- does not exclude allowance for expenses, 637.
- bailiff of trustee, allowed to, 633.
- direction to allow, trust when created by, 641.
- management of business, for, not allowed to trustee, 491.

# **SALE.**

- administrator, by, 467, 468.
- administrator disabled from purchasing trust property, 490.
- agent, mode of conducting sale by, 435.
- trustee for sale cannot purchase by means of, or as agent for another, 486.
- apportionment of purchase-money, 430.
- auktion, by, advertisements by trustees in case of, 434, 435.
- buying in at, when trustees justified in, 437.
- conditions of sale as to, 435, 436.
- duty of trustee to sell by, 423.
- lots, trustees may sell in, 437.
- trustees for sale cannot purchase at, 485, 489.
- breach of trust by sale at inadequate value, 424.
- sale of property purchased in breach of trust, 472 note (c).
- sale which is a, cannot be specifically enforced, 423.
- buying in property at, duty of trustees as to, 437.
- cestui que trust, by, to trustee when upheld, 487, 488.
- conditional contract by, 423, 424.
- trustee selling bound to consult interests of, 423.
- charge of debts on realty, to give effect to, 461 *et seq.*
- charges, trustee may sell subject to, 435.



[The paging refers to the [\*] pages.]

**SALE**—*continued*.

- charity lands, of, 539, 540, 930.
- chattels, of, by executor, 477 *et seq.*
- cheque, trustee justified in accepting payment of deposit by, 437.
- completion of, by trustee, 440, 441.
- conditions of, on sale by trustees, what are proper, 435, 436.
- contract of**—
  - approval of Court, must be with, after institution of suit, 422.
  - cestui que trust, by, how usually entered into, 423.
  - conditional on approval of Court, mode of entering into, 422 *et seq.*
  - conversion effected by, 939, 943.
  - death of purchaser without heir after payment but before conveyance, effect of, 583.
  - effect of, in equity, 141, 142, 939, 943.
  - estate contracted to be sold, included in general devise, 233.
  - executor, by, as to real estate, 467.
  - empowered to convey estate contracted to be sold, 1011.
  - implied trustee, vendor is, for purchaser, 141, 1011, 1012; but *sub modo* only, 142, 233.
  - rescission of, powers of trustees as to, 437.
  - specific performance of, against trustee, 423, 429, 441.
- conveyance by trustee for sale**—
  - covenants in, 438, 441 *et seq.*
  - “grant,” use of word, in operative part, 441.
  - parties to, 447.
- costs and expenses of trustees, to raise, 451.
- co-trustee, to, improper, 503.
- co-trustees, responsibility of, for sale, 424.
- Court, by, conduct of, to whom given, 450.
  - how far conversion of property effected by, 151, 152, 951.
- jurisdiction of, to order sale or mortgage, 427.
- sanction of, to sale when necessary, 422, 449.
- Crown debt, under extent for, 817.
- decree for, equitable interests when bound by, 1010.
  - makes legal owner a trustee within Trustee Act, 1025, 1040.
- deposit on, trustees should not leave in auctioneer’s hands, 448.
  - trustees purchasing may pay, 501.
- devise upon trust to sell passes the fee, 213.
- devisee, by, of real estate charged with debts, 465, 469, 470.
- different trusts, of property held on, 430.
- disclaiming trustee, purchase of trust property by, 485, 490.
- discretion of trustee cannot be questioned by purchaser, 426.
- Drainage Acts, charge under, effect of, on exercise of power of sale, 428.
- duration of trust for sale, 425.
- equitable interest, of, information to be given by vendor, 707.
- equity of redemption, of, by trustee subject to mortgage, 427.
- execution creditor may purchase on sale by sheriff, 490.
- executor, by, of assets, when effectual, 477 *et seq.* See EXECUTOR.
  - of real estate charged with debts, 466, 467, 469.
- executor, disability of, to purchase trust property, 490.
- extinguishment of trust for sale, 425.
- foreign property, of, jurisdiction to order, 49.
- heirlooms, of, under Settled Land Act, 566, 567, 684.
- injunction to restrain improper sale by trustee, 435, 855.
- judgment creditor, when entitled to enforce judgment by, 812, 814.
- lands abroad, of, jurisdiction to order, 49.
- lease, trustee for sale may not grant, 425.
- leaseholds, of, title to be deduced on, 438, 439.

[The paging refers to the [\*] pages.]

**SALE**—*continued*.

- lots, in, right of purchaser to abstract of title, 440.
- lots, trustees may sell in, 437.
- lunatic's estate, of, when authorized, 964. See LUNATIC.
- market overt, in, 860, 893.
- mines, sale of, apart from surface, 433.
- sale of surface apart from, 432, 433.
- mortgage, trust for sale will not in general authorize, 425, 426.
- trust to mortgage, does not authorize sale, 426.
- mortgagee, by, by virtue of recent Act, 331 note (c), 431, 432.
- mortgagee may purchase mortgaged property, 490.
- option of purchase, trustee should not lease with, 425.
- partition, in lieu of, effect of, 151, 152. See PARTITION ACTS.
- partition not authorized by power of sale, 427.
- payment of debts, for, 450.
- personal estate, trust for sale on its insufficiency for debts, 450, 451.
- portions, to raise, 413, 418 *et seq.*
- possession to purchaser, when to be given, 441.
- postponement of, by trustees, under power to that effect, 290.
- power of**—
  - consent to exercise of, 604.
  - control of Court over exercise of, 613.
  - discretionary, purchaser cannot question exercise of, 426.
  - Drainage Acts, charge under, effect of, on exercise of power, 428.
  - executory trust, when Court will insert power of sale in settlement under, 127 *et seq.*, 429.
  - implied, where, by charge, 213, 418, 466, 467, 469.
  - over real estate covenanted to be settled on trusts of personalty, 434.
  - mortgage, in, 431, 432. See MORTGAGE.
  - mortgage with powers of sale, whether authorized by power to mortgage, 426, 427.
  - whether by power to raise money by sale or mortgage, 426.
  - partition whether authorized by, 427.
  - personal representative of surviving trustee is now competent to exercise, 233.
  - receipts, whether it implies power to give, 460.
  - Settled Estates Act, general power when conferred under, 622.
  - settlement, in, effect of usual power, 427.
  - not necessary to be inserted since Settled Land Act, 1882, 429.
  - time within which power should be exercised, 458, 605, 606.
  - trustee when bound to exercise, 613.
  - usual power, whether it is, under executory trust, 127.
  - under covenant to settle realty similarly to stock, where power of varying securities, 130.
- preliminaries to sale by trustees, 424.
- propriety of, by trustees, purchaser when bound to see to, 450, 451.
- purchase of trust property by trustee for sale, 484 *et seq.* See PURCHASE.
- purchase-money, payment of, to person who has ceased to be owner, 705.
- to trustees how to be made, 447, 448.
- purchaser when bound to see to application of, 451 *et seq.*
- unpaid, lien of vendor for, 714.
- purchaser whether bound by trust, 246, 857 *et seq.* See PURCHASER.
- receipt of purchase-money by trustees, 447, 448, 473.
- power to give receipts, 450 *et seq.* See RECEIPT.
- request for, how to be testified, 429.
- reversion, sale of, in concurrence with owner of prior estate, 430.
- Settled Land Act, 1882, under powers of, 428, 429, 555 *et seq.* See SETTLED LAND ACTS.

[The paging refers to the [\*] pages.]

**SALE**—*continued*.

- effect of Act on powers of sale arising under charge of debts, 470.
- solicitor, liability of trustees for Acts of, 474, 475.
- specific performance of contract for, 423. See **SPECIFIC PERFORMANCE**.
- not enforced if involving breach of trust, 423.
- not where proper request for sale not obtained, 429.
- whether when involving hardship, 441.
- succession duly attaching on property does not prevent trustees making good title, 440, 441.
- survivorship of trust for sale, 430, 431.
- surviving partner, purchaser of trust property by, 490.
- tenant for life, by, under Settled Land Act, 1882, 428, 429.
- sale by trustees with concurrence of, 430, 470.
- timber, sale of, by trustees apart from estate, 432, 433.
- time for sale, reasonable time allowed, 424, 457, 458.
- “after death of A.,” trust for sale, 430.
- “convenient speed,” trust to sell with, 424.
- limited period, trust to sell within, 424, 425.
- portions, in order to raise, 412 *et seq.*, 417, 418, 420.
- trustees neglecting to sell, held liable for depreciation, 424.
- title**, commencement of, 438.
- conditions as to, on sale by trustees, 435, 436.
- investigation of, by trustees before sale, 432.
- objection to, on ground of improper appointment of trustees, 663.
- production of documents of, covenants to be entered into as to, 438, 442 *et seq.*
- purchaser, to be deduced to, 438 *et seq.*
- trustee may do all reasonable acts for clearing title, 440.
- tortious sale of land by trustee, remedy for, 902.
- trust for**—
  - administration action, how affected by, 449.
  - assign of trustee when competent to execute, 603.
  - consent required to exercise of, under Settled Land Acts, 623 *et seq.*
  - debts, for payment of, effect of, 450.
  - extinguishment of, 425.
  - fee simple conferred by, 213.
  - heir of settlor, attaches to, where no trustee named, 834.
  - heir of trustee when competent to exercise, 230. See **HEIR**.
  - legal estate passing under devise upon, 213.
  - ministerial, whether, or arbitrary, 18.
  - mortgage not authorized by, 425, 426.
  - personal representative of trustee, exercisable by, 233.
  - power of sale distinguished from, 451.
  - restriction on exercise of, under Settled Land Acts, 626.
  - special trust, is, and not use within Statute of Uses, 210.
  - survives, 430, 431.
  - time within which trust should be executed, 424, 457, 458, 601.
- trustee**, by, to co-trustee improper, 503.
- trustee for**—
  - “absolutely entitled,” is, within Lands Clauses Act, 447.
  - action instituted, suspends exercise of powers of, 597.
  - advantage, duty of trustee to sell to, 423.
  - attested copies, when trustees must give, 443.
  - auction, Court will not authorize trustee to bid at, 489.
  - charge, may apply purchase-money in paying off, 594.
  - concurrence by, in sale, with other vendors, 430, 435.
  - advice or sanction of Court, how obtainable, 619, 620.
  - contract by, 423, 429, 437, 441. See *supra*, **contract**.

[The paging refers to the [\*] pages.]

# **SALE, trustee for—*continued*.**

- conveyance by, concurrence of *c. q. t.*, when necessary, 447.
- grant, effect of, 441.
- power of attorney, form of, on assignment of *chose in action*, 446, 447.
- costs and expenses of, 451.
- covenants on sale by, what to be entered into, 441 *et seq.*
  - indemnity, for, against breach of covenants, 444, 445.
  - production of title deeds, as to, 438, 442 *et seq.*
  - statutory, implied in conveyance, 442.
  - title, for, 441, 442.
- delegation of trust by, 424, 471.
- discharge of mortgage on settled estate by, 594.
- discretion of, sale at, purchaser cannot question its exercise, 426.
- enquiries to be answered by, 448.
- lease, trustee for sale may not in general grant, 425, 595.
- limited interest, of, may concur in sale of whole, 594.
- married woman trustee can exercise discretion, 34.
- mode of conducting sale, 423.
- mortgage, trustees for sale have no power to, 425 ; but may sell to pay off, 594.
- neglecting to sell, held liable for breach of trust, 903.
- one trustee, payment to, 355, 356.
- partition, not authorized to make, 427.
- purchase of trust property by, 484 *et seq.* See PURCHASE.
- purchaser from, when bound to see to propriety of sale, 450, 451; or application of purchase-money, 451 *et seq.*
- quantity, whether trustee may sell larger, than trust requires, 451.
- receipt of purchase-money by, 447, 448, 450 *et seq.*, 473. See RECEIPT.
- Settled Land Acts, powers of trustee how restricted by, 626.
- single trustee, payment to, justifiable, 355, 356, 663.
- solicitor receiving purchase-money, liability of trustee, 474, 475.
- surviving trustee can make a good title, 430.
  - notwithstanding there be power to appoint new trustees, 431.
- tenant for life, trustee should not sell to gratify, 428.
- tenant for life, whether trustee may sell to, 317 note (o).
- time for sale, 424, 425, 430, 457, 458. See *supra*, time.
- title, bound to show good, 432.
- value of property, duty of trustee to ascertain, 424.
- vesting order in aid of decree for, 1041.

# **SALMON FISHING.**

- grant of, by Crown, to trustees, 190.

# **SATISFACTION, 401 *et seq.***

- ademption, distinguished from, 401, 408.
- contingent legacy is not a satisfaction of previous vested interest, 407.
- covenant to settle property, of, by subsequent advance, 401 *et seq.*
- debt, of, by subsequent legacy, 405 note (b), 406, 407.
- direction for payment of debts negatives presumption of, 407.
- doctrine of, explained, 401, 402.
- election arises in cases of, but not in cases of ademption, 408.
- land, covenant to settle, not satisfied by settlement of money, 405.
- parents and persons in *loco parentis*, doctrine of, applies only to, 402.
- partial, by legacy of smaller amount than that agreed to be settled, 405, 407.
- presumption, is matter of, only, 403.
- residuary gift, may operate by way of, 405.
- son, legacy to, not a satisfaction of interest of son's children, 406.

# **SAVINGS BANK.**

- trust, not affected by notice of, 32.

[The paging refers to the [\*] pages.]

# SCANDAL.

charge of misconduct on part of trustee is not, 847.

# SCHEME, 535, 615, 929. See CHARITY.

# SCHOOL.

chapel for, trust of, how to be administered, 531.

Endowed Schools Act, 1869, provisions of, 537.

"free grammar and free school," trust for, how to be administered, 536.

trust for poor applied to school house, 538.

trustees of, religious opinions of, 533.

# SCHOOLMASTER.

ejection of person ceasing to be, 537, 932 note (e).

removal of, proceedings for, under Charitable Trusts Acts, 933.

under Romilly's Act, cannot be taken, 929.

salary of, augmentation or reduction of, by governors of charity, 538.

trust for "finding a master," how carried into effect, 537, 538.

# SCOTLAND.

*chase in action*, no survivorship of, by Scotch law, 347.

deposit of deeds in, creates no lien, 48.

equities in respect of lands in, administered here, 48.

executors here not bound to know the law of, 347.

real securities in, whether trustees may invest on, 313, 329.

Thellusson Act, formerly excepted from, 94; *secus* now, 94.

Trustee Act, excepted from, 1039.

# SECRET EQUITY.

party having, standing by, may be precluded from setting up, 716.

# SECRET TRUST.

charity, for, heir at law may compel disclosure by devisee, 63.

devise of legal estate is good, but equity acts on conscience of devisee, 66.

charity, for grantor of lands to, 96.

discovery as to, trustee bound to give, 63, 64.

parol evidence to prove, when admissible, 62.

trust must be communicated to trustee in testator's lifetime, and he must accept same, 62.

if not, legatee is trustee for next of kin, 62.

fraud, in cases of, 61.

joint tenants, statements in will of one not sufficient to affect survivor, 62, 63.

unlawful trust, devisee will not be allowed to take but trust results for heir at law, 63.

# SECRETARY.

company, of, cannot make a profit by his trust, 279.

# SECRETARY OF STATE.

not trustee as to monies in his hands, 642.

# SECURITY.

agent, from, trustee not called upon to require, 256.

*cestui que trust*, by, on taking possession, 686, 687.

company, issued by, transferee of, by what equities affected, 687, 688.

marshalling securities, as between purchasers, 719.

money, gift of, in will may pass mortgage in fee, 228.

negotiable, when capable of being followed, 240, 241, 892, 893.

personal, trust money should not be invested or continued in, 290, 291.

power to invest in securities, will not authorize purchase of shares, 319.

promissory note is not, but merely evidence of debt, 306.

real securities, investment in, by trustees when authorized, 308, 312. See

INVESTMENT.

[The paging refers to the [\*] pages.]

# SECURITY—*continued*.

tolls and road bonds are, 326.  
 refund, to, when required from recipient of money, 348.  
 safe custody of, by trustees, 295.  
 shares in railway are not, 319.  
 tenant for life of renewable leaseholds, by, where fine paid by remainderman, 374, 377, 378.  
 terminable securities, what are, 320.  
 trustee required to give, for due execution of trust, 854.  
 vary securities, power to, 318, 323, 460; a "usual power," 127.

# SEISIN.

curtesy, what, required to give, 723, 733 *et seq.*  
 equitable, 723.  
     revocation of will by disturbance of, 722.  
*ex parte maternā*, 823.  
 infants of, *ex parte maternā* of leaseholds for lives may be changed to seisin  
*ex parte paternā*, 968.  
*possessio fratris* of a trust, 723.

# SELECTION.

power of, not interfered with by Court, 615.

# SEPARATE USE, 753 *et seq.* See MARRIED WOMAN.

# SEQUESTRATION.

corporation, against, 937.  
 equitable execution by, 813.  
 rents, of, ordered, where tenant for life of leaseholds refuses to renew, 379.

# SERVICE.

investment, under general orders of Court as to, 309.  
 jurisdiction, on person out of, 49, 1034.  
 motion for payment into Court, of notice of, 977.  
 petition for advice of Court, of, 618, 619.  
 Trustee Act, under, 1033.

# SET OFF, 698 *et seq.*

agreement for, when presumed in equity, 699.  
 army agent, by, against proceeds of officer's commission in his hands, 708.  
 assignee of debt bound by set off against assignor, 687.  
 assignor, between, and trustee, does not affect assignee, 695 note (b).  
 banker and customer, between, 698 *et seq.*, 895.  
     trust account and private account, 895.  
 bankrupt co-trustee, against, to prejudice of solvent co-trustee, 913.  
 bankrupt trustee entitled to beneficial interest, against, 912.  
 costs, for, how affected by solicitor's lien, 696.  
 costs, solicitor may set off, in accounting for receipts to trustees, 641.  
 damages, mere right to, cannot be set off against debt, 701.  
 debt of trustee, for, against his costs, 635.  
 defaulting trustee cannot set off a gain against a loss, 907, 908.  
 equity, in, may be though not at law, 699.  
     cross demands must one or both be equitable, 699.  
     must not be *in autre droit*, 699 *et seq.*  
 legatee and executor, between, 696, 699.

# SETTING ASIDE.

deed, costs of action for, 989, 990.  
 deed, creditors', 77 *et seq.*  
 purchase of trust property by trustee, 484 *et seq.* See PURCHASE.

# SETTLED ACCOUNT.

opening, against solicitor trustee, 630.

[The paging refers to the [\*] pages.]

# SETTLED ESTATES ACT.

- general powers of sale or leasing when granted under, 621.
- improvements, application of purchase money in, 504.
- investment of purchase-money under powers of Settled Land Act, 562.
- leaseholds which tenant for life entitled to enjoy in specie, purchase-money of, how to be dealt with, 299.
- powers of, how affected by Settled Land Acts, 621, 622.
- trustees when proper persons to apply to Court under, 590, 677 note (a).

# SETTLED LAND ACTS, 1882, 1884, Chap. XXII., 550—579 ; Chap. XXIII. sect. 2, 621—626.

- action for execution of trusts, decree in, does not prevent exercise of powers, *semble*, 557.
- Agricultural Holdings Act, 1883, application of money in improvements under, 563, 564.
- assignee not affected by exercise of powers, 555, 556.
- assignment, powers under Act incapable of, 555.
- base fee, owner of, may exercise powers of Acts, 553.
- capital money arising under the Acts**, definition of, 561, 562.
  - devolution of, as land or personalty, 564, 566, 567, 571.
  - investment of, 562 *et seq.*
    - application for, how to be made, 564.
    - payment of, to trustees, 552, 564, 565 ; or into Court, 564.
    - purchase of land, when to be applied in, 565, 571.
- charge of debts, powers of sale or mortgage by virtue of, how affected by Acts, 470, 471.
- chattels, sale of, 566, 567. See *infra* **heirlooms**.
- conveyance by beneficial owner, parties to, 685, 686.
- conveyance of land purchased under provisions of, 568, 571.
- costs payable by trustees out of purchase money, 571.
- Court, powers of, under Acts, 560, 566, 568 *et seq.*, 620.
  - direction of, how obtainable, 620, 621.
- Crown entitled in reversion bound by exercise of powers, 553.
- curtesy, tenant by, exercise of powers of Acts by, 553 note (c), 554.
- enfranchisement, power of, conferred by Acts, 555.
- exchange, power of, conferred by Acts, 555, 557.
- expenses incurred under, trustee may reimburse himself for, 636.
- finer on granting of leases are capital monies, 561 note (b).
- heirlooms**, 566, 567, 684.
  - directions for disposal of, where mansion house sold, 560 note (a).
  - proceeds of sale of, are capital money under Acts, 566, 684.
    - but, *semble*, do not devolve as land but as personalty, 566, 567..
  - sanction of Court required to sale of, 566, 684.
- improvements, application of trust money in, 505, 560, 561, 563, 575.
  - definition and enumeration of, 560 note (b).
- infant, exercise of powers of Acts on behalf of, 554, 569, 575.
- investment under, of monies liable to be laid out in land, 311, 312, 562:
  - of monies paid into Court under Acts of Parliament, 562.
- leasehold, proceeds of sale of, how to be dealt with, 565, 566.
- leases, powers as to granting, conferred by Acts, 555, 557.
- lunatic, exercise of powers on behalf of, 552, 558.
- mansion house, lease or sale of, consents, &c., necessary to, 560.
- married woman, exercise of powers by, 569.
  - where married woman an infant, 569.
  - not prevented by restraint on anticipation, 788.
- mines, power of tenant for life to work, 190, 432 ; to sell, 433 ; to lease, 555, 682, 683.
  - purchase of, out of capital monies arising under Acts, 563.
- mortgage, power of tenant for life to make, 557, 558.

[The paging refers to the [\*] pages.]

# SETTLED LAND ACTS—*continued.*

- notice to trustees of intention to exercise powers, when to be given, 557.
  - . general notice is now sufficient, 558 ; except as respects mortgage or charge, *ib.*
  - mode of giving, 557.
  - number of trustees to receive, 557, 558.
  - period of, 557 *et seq.*
  - purchaser not bound to inquire as to giving of, 558, 559.
  - waiver of, by trustees, 558, 559.
- partition, power to concur in, conferred by Acts, 555, 557.
- powers conferred by Acts generally, 555. See *infra*, **tenant for life.**
  - restriction imposed by Acts on powers of trustees, 621.
- purchaser under, inquiries to be made by, 559.
- remainderman, provisions for protection of, 556, 557, 565, 566.
  - protection afforded to, is unsubstantial, 559.
- reversionary interest, application of purchase money of, 299 note (b), 565, 566.
- sale, powers of, conferred by Acts, 428, 429, 555 *et seq.*
- Settled Estates Act, powers of, how affected, 621, 622.
- "settled land," within meaning of Acts, what is, 552.
- settlement, definition of, 550 note (a).
  - powers of, may be exercised in addition to powers of Acts, 556, 569, 621.
  - consents required to exercise of, 622 *et seq.*
- shares, where settled property divided into, powers how exercisable, 622, 623.
- solicitor for trustees, notice to be given to, 557.
- surrenders, power to accept, conferred by Acts, 555.
- tenant for life—**
  - bankruptcy of, effect of, on exercise of powers, 622.
  - consent of, to exercise of powers by trustees when necessary, 470, 471, 622.
  - contract by, not to exercise powers, is void, 555.
  - definition of, under Act, 553, 622 ; what persons are within, 554, 555, 622, 623.
  - forfeiture, exercise of powers by, does not occasion, 556.
  - infant, exercise of powers on behalf of, 554, 569, 575.
  - lunatic, exercise of powers on behalf of, 552, 558.
  - married woman, exercise of powers by, 569.
  - powers of, under Acts, generally, 129, 428, 429, 436, 553, 555.
    - cannot be assigned, 555 ; are cumulative, 556.
  - several persons together may constitute, 622.
  - but consent of one is sufficient, 623.
  - trustee, is, in relation to exercise of his powers, 436, 437, 556, 557.
    - will not be appointed, for purposes of Acts, 41, 552, 666.
- tenant in fee with executory limitation over may exercise powers of, 553, 554.
- tenant in tail may exercise powers of, 553, 554.
  - secus* of estates given for public services, 553.
- tenant *pur autre vie* may exercise powers of, 553, 554.
- timber, power of tenant for life to cut, 109, 502 note (e), 574 note (f) 578.
- trust for sale, exercise of powers where settlement contains, 570, 236, 624, *et seq.*
- trustees for purposes of—**
  - appointment of, 551, 552.
    - by Court, 551, 552.
    - discretion of Court, how to be exercised, 551.
    - to receive money under Lands Clauses Acts, 565.
  - settlement should contain express appointment, 551.



[The paging refers to the [\*] pages.]

## SETTLED LAND ACTS—*continued.*

- consent of, when required to exercise powers, 560.
- conveyance, how far bound to see to sufficiency of, 567, 568.
- definition of, 550, 551; who are within, 552.
- discretion, exercise of, by trustees when required, 565.
- executors having power to sell settled lands are, 551.
- indemnity to, giving consent, &c., to exercise of powers, 559, 567, 568.
- independent persons, must be, 666.
- notice to, of intention to exercise powers, 557 *et seq.* See *supra*, notice.
- number of, to whom capital monies to be paid, 552, 553, 567.
- to whom notice to be given, 557, 558.
- propriety of sale, not bound to enquire as to, unless on suspicion of fraud, 559.
- receipt of, 567.
- tenant for life will not be appointed, 41, 552, 666; nor his solicitor, 666.
- title, when not liable to see to, 567, 568.

## SETTLEMENT.

- bankruptcy, settlor cannot settle own property with trust to go over on, except on marriage, 98.
- conversion of land or money under trusts of, 939 *et seq.* See CONVERSION.
- conveyance upon trusts of, how to be framed, 506.
- covenant or agreement to settle property, effect of, 140, 141.
- avoidance of, as against trustee in bankruptcy, 80.
- execution creditor of settlor, rights of, as against *c. q. t.*, 224.
- satisfaction of, by subsequent advance by parent, 401 *et seq.* See SATISFACTION.
- trustee under settlement entitled to assume due performance of, 207.
- definition of, under Settled Land Acts, 550 note (a).
- equity of married woman to, 740 *et seq.* See MARRIED WOMAN.
- executory trust for, how carried into effect, 507, 508. See EXECUTORY TRUST.
- failure of *c. q. t.*, whether settlor can claim benefit of, 284.
- impeachable, trustee should assume validity of, until actually impeached, 286.
- infant married woman, by, confirmation of, by her while *covert*, 766.
- inoperative, trustees of, ordered to reconvey, 360.
- judgment debt, onus of, thrown on unsettled estates, 718.
- leaseholds, of, does not *per se* imply a direction to renew, 363.
- limitations in, to trustees to preserve, &c., object of, 380 *et seq.*
- marriage articles, construction of executory trusts in, 112 *et seq.* See EXECUTORY TRUST.
- married woman, by, of own property, restraint on anticipation in, ineffectual as against creditors, 769, 787.
- new property, of, on old trusts, 54.
- personality, of, cannot be made so as to correspond entirely with limitations of real estate, 116.
- post nuptial, executory trust in, construed as in will, 126.
- power of sale in, effect of, 427 *et seq.* See SALE.
- precatory trust may arise by words of recommendation, &c., in, 132.
- protector of, 381, 382. See PROTECTOR OF SETTLEMENT.
- purchaser under, who is, as against judgment creditor, 811.
- reality, of, usual frame of, 380.
- rectification of, in conformity with marriage articles, 113.
- distinction where settlement was after the marriage and where before it, 113.
- semble*, not directed as against a purchaser, 114 note (a).

[The paging refers to the [\*] pages.]

# SETTLEMENT—*continued*.

referential, form of, 506, 507.

separate use of married woman, for, 753 *et seq.* See MARRIED WOMAN.

settlor, who may be, Chap. III., sect. 1, 21—29.

“strict,” meaning of term, 507, 508.

voluntary, of lands or chattels real (but not of personalty) defeated by subsequent sale by settlor, 75, 76.

settlor retaining possession of, is bound, 74, 75.

void as against creditors, when, 77 *et seq.* See VOLUNTARY SETTLEMENT.

ward of Court, by, does not operate as confirmation of past breach of trust, 923.

# SETTLOR. See SETTLEMENT.

who may be, Chap. III., sect. 1, 21—29.

# SEVERANCE.

estate from powers, of, 610.

trustees, by, in legal proceedings, not permitted, 260.

trusteeship, of, 666, 667.

# SHALL AND MAY.

in Acts of Parliament, force of, 263 note (h).

# SHARE.

aliquot, payment of, into Court sometimes ordered, 977.

mortgage of undivided, loan on, whether authorized, 328.

sale of undivided, 594

# SHARES. See STOCK.

breach of trust by neglecting to get in, 908.

calls on, trustee may obtain advice of Court as to, 620.

certificates for, deposit of, by trustee, for own debt, 715.

charging order on, under 1 & 2 Vict. c. 110, effect of, 806 *et seq.* See CHARGING ORDER.

*choses in action*, not comprised under, 243.

constructive trustee of, vendor after contract for sale is, 1011.

conversion of, in canal insurance or railway companies, when trustees should make, 300.

distringas, writ of, notice in lieu of, extended to, 973. See DISTRINGAS.

dividends on, how received, 225, 260, 684. See DIVIDENDS.

married woman, of, provisions of Married Women's Property Acts as to, 789, 791, 792.

new, are an accretion to trust estates, 908.

but trustees cannot accept, unless expressly authorized, 596.

new trustee, how vested in, 650, 652, 654.

purchase by trustees of shares belonging to trust, 494.

restraining order, under 5 Vict. c. 5, sect. 4, effect of, 971 *et seq.*

retention of, belonging to testator by executor, whether justifiable, 289.

security, shares in railway are not, 319.

standing in one name only, trustees should not invest in, 320.

stock, are, within Trustee Acts, 1010.

things in action, are not, within Bankruptcy Act, 243.

transferee of, *bona fide*, not subject to equities affecting transferor, 697, 859.

trustee of, liable as if beneficial owner, 239.

trusts of, company not bound to take notice of, 970.

# SHELLEY'S CASE.

rule in, application of, to trusts, 109, 110.

separate use of married woman, where life estate is for, 119.

where estates of ancestor and heir of different qualities, rule does not apply, 110.

[The paging refers to the [\*] pages.]

**SHIP.**

- purchase of, in name of stranger, 166, 167.
- formerly did not give rise to resulting trust, 166.
- but *secus* now under recent Registration Acts, 166.
- shares in, are within Trustee Acts, 1010 note (b).

**SIGNATURE.**

- declaration of trust, required for, 56, 57; by whom, 57.

**SIMONY.**

- advowson, purchase of, when simoniacal, 104,
- presentation, direction to purchase, for a particular person, 104.

**SIMPLE CONTRACT DEBT.** See **DEBT.**

- breach of trust *per se* creates simple contract debt only, 204, 906.
- interest on, when allowed, 525, 526.
- lands of trustee trading are liable for, under Sir S. Romilly's Act, 238.
- money to be converted into land formerly not liable for, 941.
- real assets, are now payable out of, 827, 829.
- under devise for payment of debts, 825.
- retainer of, by executor, 831,
- none by heir or devise, 830.
- specialty and simple contract debts now rank in equal degree, 206, 238, 524, 831.
- trust for payment of debts, under, how paid, 524 *et seq.*

**SIMPLE INTEREST.** See **INTEREST.**

- usually charged for improper retainer of trust money, 338 *et seq.*

**SIMPLE TRUST.**

- assets, is, within Statute of frauds, sect. 10, 827.
- cestui que trust*, estate of, in what it consists, Chap. xxv. sect. 1, 674—688.
- judgment against *c. q. t.* under Statute of Frauds, sect. 10, 802.
- under recent Acts, 811.
- nature of, explained, 2, 18, 572.
- powers of trustee holding upon, 572, 595.
- special trust, when converted into, 689,
- Uses, Statute of, applicable to, 6.

**SINGLE TRUSTEE.** See **SOLE TRUSTEE.****SOLE TRUSTEE.**

- appointment or continuance of, improper, 42, 659, 662, 663.
- composition of debts, &c., by, 591, 592.
- conveyance by, 431.
- Court will not appoint, except under special circumstances, 1029.
- jurisdiction, where resident out of, receiver appointed, 983.
- vesting order as to interest of, 1016, 1017, 1021.
- payment of money to, when justifiable, 355, 356, 357.
- power when exercisable by, 600, 604, 606, 607.
- retirement of, 659.
- Settled Land Acts, powers of, whether exercisable by, 552, 553, 567.
- solicitor, who is, should have other professional advice, 635 note (f).
- trust when exercisable by, 606.

**SOLICITOR.**

- borrower, of, trustee lending money should not employ, 337.
- breach of trust, wilfully advising, may be struck off roll, 899.
- when liable for, as express trustee, 901.
- cestui que trust*, of, cannot bind him by contract with trustee, 488.
- constructive trustee, solicitor violating his duty held to be, 191.
- costs, may set off, against receipts, 641.
- co-trustees should act by same, 260, 261.

[The paging refers to the [\*] pages.]

# **SOLICITOR—continued.**

- should not rely on solicitor co-trustee, 207, 635.
- deposit of money with, for investment does not create trust, 82, 83.
- direction to employ testator's, trustees whether bound by, 641.
- employment of, by trustees, when justifiable, 252 note (f), 255, 256, 634.
- to receive moneys, 256, 447, 448, 474, 475.
- semble*, is not justifiable, 256.
- father and son being client and solicitor, fiduciary relation rebuts presumption of advancement, 179.
- ignorance or negligence of, trustees when liable for, 325.
- incumbrances created by client, solicitor buying up, is accountable, 276.
- investment, trustee should not entrust money for, to his solicitor, 353 note (b).
- lien of, for costs, 641.
- notice of, on documents, he is not bound to give, 703, 704.
- right to set off costs is in general subject to, 696 note (e).
- Limitations, Statutes of, when entitled to plead, 901 note (b).
- loan of trust money, solicitor negotiating, when liable for breach of trust, 337.
- married woman, retainer of solicitor by, 762, 785.
- lien of solicitor of, for costs notwithstanding restraint against anticipation, 785.
- money scrivener, business of, now obsolete, and transacted by solicitor, 82.
- mortgages on client's property, buying up, 856.
- notice to solicitor of trustee is not notice to trustee, 709.
- partner, when liable for breach of trust by, 902.
- purchase by, from client not set aside after lapse of time, 872.
- purchase in name of son, a solicitor, held not an advancement, 179.
- purchase-money, misapplication of, by solicitor, trustees liable for, 474, 475.
- payment of, to solicitor of trustees, 448.
- receipt, cannot give, *virtute officii* for money recovered in action, 256.
- security to, for professional charges, when set aside, 630.
- surveyor, trustees should not leave appointment of, to their solicitor, 324, 499.
- tenant for life, of, will not be appointed trustee under Settled Land Act, 666.
- testator, to, whether trustees should employ, 641.
- trustee should not delegate his duty to, 252, 353 note (b).
- when liable for acts of, 252, 325.
- trustee, of, has no lien on trust fund, 641.
- notice to be given to, under Settled Land Acts, 557.
- taxation against, at instance of *c. q. t.*, 642 note (b).
- when liable for breach of trust, 899, 900.
- trustee who is, cannot charge for time and trouble, but only for costs out of pocket, unless where special contract, 281, 630, 631, 987.
- costs of, form of order as to, 987.
- co-trustees, liability of, for acts of, 635.
- co-trustees, several, made defendants to suit allowed to employ one, *sed quare*, 282.
- country solicitor defending suit by agent, proportion of costs allowed to, 281, 282.
- non-professional charges, not allowed unless expressly authorized, 281.
- partner, trustee employing his, not allowed to charge, 281, 282.
- unless by the articles the trustee is not to have any profit, 282.
- valuer, trustees should not leave appointment of, to their solicitor, 324, 499.
- vendor refusing to convey, of, directed to convey, 1012.

## **SOLICITORS' ACT, 642.**

## **SOUTH SEA.**

- stock and annuities, trustees may not invest in, 306, 307.

## **SOVEREIGN. See CROWN.**

- declaration of trust by, 21, 22.

[The paging refers to the [\*] pages.]

# SOVEREIGN—*continued*.

- prizes taken in war vest in, 22.
- commonly granted to trustees for captors, 22.
- effect of such a grant, 22.
- will of, as to private property, 22.

# SPECIAL CASE, 352.

# SPECIAL OCCUPANT.

- heir taking as, may disclaim, 197.

# SPECIAL POWER. See POWER.

- distinguished from general power, 572.

# SPECIAL TRUST.

- assets, is not, within Statute of Frauds, sect. 10, 827.
- cestui que trust, estate of, in what it consists, Chap. XXV. sect. 2, 689—691.
- continues until countermanded by *c. q. t.*, 690.
- nature of, explained, 3, 4, 18, 210, 572.
- powers of trustee under, 572.
- simple trust, how converted into, 689.
- Statute of 1 Ric. 3, c. 1, not applicable to, 5.
- Uses, Statute of, not applicable to, 6, 210.

# SPECIALTY DEBT.

- breach of trust, when created by, 205, 206, 906, 909.
- devise avoided as against specialty creditor, 206.
- heirs where bound by, 205, 206.
- innocent trustee, claim of, to indemnity, is, 909.
- interest on, when allowed, under creditors' deed, 526, 527.
- priority of, formerly, in administration of assets, 825, 829 *et seq.*
- retainer of, by executor, 831.
- by heir or devisee, 830 note (*f*).
- simple contract and specialty debts now rank in equal degree, 206, 238, 524, 831.
- trust for payment of debts, rights of specialty creditor under, 524.

# SPECIE.

- enjoyment in, a question of intention, 299, 300.

# SPECIFIC APPROPRIATION.

- letter of advice that special credit has been opened to be paid ratably on receipt of goods does not constitute, 83.
- loan for specific purpose, effect of, 894.
- trustee in bankruptcy, when money, &c. may be followed into hands of, 240, 912.

# SPECIFIC BEQUEST.

- direction to enjoy in specie distinguished from, 299.
- residuary, distinguished from, as regards duty of trustee to convert, 298, 299.

# SPECIFIC PERFORMANCE.

- costs of trustee in action for, when chargeable on trust estate, 432.
- where trustee cannot make a title, 985.
- decree for, makes legal owner a trustee within Trustee Acts, 1026.
- laches in bringing action for, effect of, 872.
- lands abroad, contracts as to, when enforced, 48, 49.
- married woman, at instance of, 762.
- mortgage, of agreement to give, 515 note (*b*).
- trustee, against, when granted, 423.
- breach of trust, not when it causes, 423.
- hardship, whether in case of, 441.
- heir of trustee for sale, who has bought by agent, in favour of, 487.
- improper sale by trustees, not enforceable, 423, 424.
- request of party, where trustee has not obtained proper, 429.

[The paging refers to the [\*] pages.]

# **SPECIFIC PERFORMANCE—continued.**

- trust for sale for payment of debts, under, where sale has been long postponed, 451.
- trustee, at instance of, not granted where sale impeachable by *c. q. t.*, 436.
- voluntary contract not enforced in equity, 80, 81.
- but carries consideration at law, if under seal, 80 note (*f*).
- voluntary settlement by vendor, a bar to action by him, 75.
- but *secus* action by purchaser, 75, 76.

# **SPIRITUAL COURTS.**

- have no jurisdiction of trusts, 17.

# **SPORTING.**

- qualification of *c. q. t.* for, under old law, 681.
- trustee not entitled to, where it can be let, 275.

# **STAKEHOLDER.**

- payment into Court by, 977, 997.

# **STAMP DUTY.**

- appointment of new trustees, on, 653.
- semble*, double duty payable on appointment with transfer of estate, *ib*.
- orders under Trustee Acts, on, 1045.
- settlement of land to be converted into money, on, 949 note (*a*).

# **STATUTES. See FRAUDS, STAT. OF; LIMITATION, STAT. OF; USES, STAT. OF; WILLS, STAT. OF; TRUSTEE ACTS; TRUSTEE RELIEF ACTS.**

- Edward I. 11 (Statute Merchant), 245.
- 13, st. 1, c. 1 (De Donis), 693.
- st. 1, c. 18 (Elegit), 245, 795.
- st. 1, c. 39 (Levari Facias), 794.
- st. 3, (Statute Merchant), 245.
- Edward II. 9, st. 2, (Sheriffs), 234.
- Edward III. 27, st. 2, c. 9 (Statute Staple), 245.
- Richard III. 1, c. 1 (*Cestui que Use* empowered to pass Legal Estate, 4, 5, 611.
- Henry VI. 19, c. 15 (Execution against Uses), 7.
- Henry VIII. 14, cc. 4, 7, 8 (Uses and Trusts), 3.
- 26, c. 13 (Forfeiture), 7, 27, 818 *et seq.*
- 27, c. 10 (Statute of Uses), 6, 209, 611, 818 *et seq.*
- 32, c. 15 (Statute of Wills), 720, 825.
- 33, c. 20 (Forfeiture), 818 *et seq.*
- Elizabeth. 13, c. 4 (Extents), 817.
- c. 5 (Creditors), 77, 80, 510, 518.
- 27, c. 4 (Purchasers), 75, 77, 803.
- 29, c. 5 (Creditors), 510.
- 43, c. 2 (Poor), s. 6, 586.
- 43, c. 4 (Charitable Uses), 927.
- James I. 1, c. 16, s. 13 (Bankruptcy), 703.
- 21, c. 16 (Limitations), 890; and see **LIMITATION, STAT. OF.**
- Charles II. 12, c. 24 (Guardian), 355.
- 14 & 15, c. 19 (Ireland), 355.
- 22 & 23, c. 25 (Game Act), 681.
- 29, c. 3 (Statute of Frauds), 57, 167, 193, 720, 802.
- s. 2 (Administration to Wife), 752.
- s. 5 (Devises of Land), 53.
- s. 7 (Creation of Trusts of Land), 53, 896.
- s. 8 (Exception of Implied Trusts) 193 *et seq.*
- s. 9 (Assignment of Trusts), 693.
- s. 10 (Judgments against *c. q. t.*), 802, 827.
- s. 12 (Estates *pur autre vie*), 165.
- William and Mary. 3 & 4, c. 14 (Action against Devisee), 206, 829.

[The paging refers to the [\*] pages.]

## STATUTES—continued.

- Anne. 4, c. 16, s. 22 (Subpœna), 971.  
6, c. 35 (Yorkshire Registry), 687.  
7, c. 19 (Infant Trustees), 1037.
- George II. 2, c. 22 (Set-off), 699.  
8, c. 6 (Yorkshire Registry), 687.  
c. 24, s. 5 (Set-off), 699.  
9, c. 36 (Mortmain), 46, 66, 96, 541.  
14, c. 20 s. 9 (Estates *pur autre vie*), 165.
- George III. 25, c. 35 (Extents), 692.  
36, c. 52 (Legacies), 355, 360.  
38, c. 87, s. 6 (Executors), 37,  
39 & 40, c. 36 (Bank of England), 971.  
c. 56 (Disentailing money-land), 959.  
c. 88, s. 10 (Will of the Sovereign), 22.  
c. 98 (Thellusson Act), 90 *et seq.*; and see LIMITATION STATUTES OF.  
45, c. 28, s. 7 (Legacies), 360.  
47, c. 74 (Trader's Lands, Assets), 238, 828, 829.  
52, c. 101 (Romilly's Act), 851, 927 *et seq.*  
54, c. 145 (Corruption of Blood), 27.  
55, c. 192 (Surrender to use of Will), 721.  
58, c. 91 (Charity Commissioners), 931.  
c. 95, s. 2 (Right of Voting for Coroners), 234, 681.  
59, c. 12 (Relief of Poor), 532.  
c. 81 (Charity Commissioners), 931  
c. 91 (Charity Commissioners), 931
- George IV. 6, c. 16 (Bankruptcy Act), 513, 634.  
c. 50 (Jurors), 681.  
7, c. 45 (Entailed Money), 959.  
c. 57 (Sales under Insolvent Debtors' Act), 431.  
9, c. 85 (Charities), 96, 541.
- William IV. 11 G. 4 & 1 W. 4, c. 40 (Executor Trustee for next of kin),  
285.  
c. 47 (Action against Devisee, Assets), 206  
233, 509, 829.  
c. 60 (Lord St. Leonards' Trustee Act), 1011,  
1012, 1020, 1023, 1026, 1033.  
11 G. 4 & 1 W. 4, c. 65, s. 32 (Infant), 1042.  
1 & 2, c. 32 (Game Act), 681.  
2, c. 57 (Charities), 850.  
3 & 4, c. 27 (Limitation of Actions and Suits), 250, 520, 871,  
874 *et seq.*, 890; and see LIMITATION, STATUTES OF.  
c. 74 (Fines and Recoveries), 14, 22, 33, 34, 114, 200,  
381, 382, 497, 694, 761, 780, 934.  
ss. 16, 17 . . . 114.  
s. 32 . . . 121, 200.  
s. 40 . . . 955.  
s. 70 . . . 959.  
s. 71 . . . 955, 959, 960.  
s. 77 . . . 200, 955.  
c. 104 (Assets), 206, 238, 240, 509, 827, 829.  
c. 105 (Dower), 733, 737, 738, 939.  
c. 106 (Inheritance), 14, 723, 824.  
4 & 5, c. 23 (Escheat), 221, 1036.  
c. 29 (Lynch's Act), 328.  
c. 76 (Poor Law Amendment Act), ss. 56, 57, 586, 587.  
c. 92 (Fines and Recoveries, Irish), 200, 784.

[The paging refers to the [\*] pages.]

STATUTES—*continued.*William IV.—*continued.*

5 & 6, c. 76 (Municipal Corporation Act), 22, 31, 851.  
s. 94 . . . 22.

- Victoria. 7 W. 4 & 1 Vict. c. 26 (Wills Act), 26, 66, 722, 940, 962, 969.  
s. 6 . . . 165.  
s. 11 . . . 803, 804.  
s. 12 . . . 796.  
s. 13 . . . 800, 803, 804, 806.  
s. 14 . . . 773, 806, 808,  
s. 18 . . . 804, 830.  
s. 19 . . . 804.  
s. 23 . . . 712.  
ss. 30, 31 . . . 213.  
s. 36 . . . 103.  
s. 47 . . . 434.  
1 & 2, c. 110 (Insolvency, Judgments), 327, 434, 803 *et seq.*  
2 & 3, c. 11 (Judgments), 809 *et seq.*, 810.  
3 & 4, c. 77 (Grammar School Act), 536.  
c. 82 (Judgments), 806, 810.  
c. 105 (Arrests on Mesne Process, Irish), 327.  
5, c. 5 (Abolition of Equity Exchequer Jurisdiction), 30,  
971, 972, 974.  
5 & 6, c. 35 (Income Tax), s. 73, 105.  
6 & 7, c. 18, s. 74 (Right of Voting), 235, 681.  
c. 73 (Solicitors' Act), 642.  
7 & 8, c. 45, s. 2 (Dissenters' Religious Property Limitation  
Act), 533.  
c. 66 (Aliens), 26.  
c. 76 (Transfer of Property, now repealed), 383.  
c. 92 (Right of Voting for Coroners), 235, 681.  
8 & 9, c. 16 (Companies' Clauses Act), 970.  
c. 18 (Lands Clauses Act), s. 69 . . . 447.  
s. 74 . . . 565.  
s. 132 . . . 687.  
c. 97 (Public Funds), 32.  
c. 106 (Real Property Amendment Act), 25, 121, 200,  
380, 383, 441, 497, 687, 693, 749, 821, 955.  
10 & 11, c. 96 (Trustee Relief Act), *in extenso*, 996 *et seq.*; and  
see title TRUSTEE RELIEF ACTS.  
11 & 12, c. 36, s. 41 (Scotland), 94.  
c. 68 (Irish Trustees Relief Acts), 1001.  
12 & 13, c. 74 (Further Trustee Relief Act), 360, 361, *in ex-  
tensio*, 1007, 1008; and see title TRUSTEE RELIEF  
ACTS.  
c. 106 (Bankrupt Law Consolidation Act), 510, 513,  
514, 703, 850, 1027.  
13 & 14, c. 28 (Peto's Act), 534, 852, 853.  
c. 35 (Sir G. Turner's Act), 362.  
c. 60 (Trustee Act, 1850), *in extenso*, 865; and see  
title TRUSTEE ACTS.  
15 & 16, c. 51, s. 32 (Enfranchisement), 596.  
c. 55 (Trustee Extension Act), *in extenso*, 893; and  
see title TRUSTEE ACTS.  
c. 86 (Chancery Amendment Act), 352, 972, 978.  
c. 87 (Relief of Suitors), 1013, 1044.  
16 & 17, c. 51 (Succession Duty), 441, 685.  
c. 70 (Idiots and Lunatics), 1013, 1026.



[The paging refers to the [\*] pages.]

STATUTES—*continued.*Victoria—*continued.*

- 16 & 17, c. 137 (Charitable Trusts Act, 1853), 535, 540, 547, 549, 851, 852, 931, 932, 933, 997, 1035.
- 17 & 18, c. 82 (Chancery Amendment Act, Lancaster), 1021.  
c. 104 (Merchant Shipping), 166.
- 18 & 19, c. 15 (Judgments), 805, 809, 810.  
c. 91 (Mercantile Shipping), 878.  
c. 124 (Charitable Trusts Amendment Act, 1855), 361, 540, 541, 547, 549, 933.  
c. 134, s. 16 (Chancery Officers), 1034.
- 19 & 20, c. 50 (Sale of Parish Advowsons), 78.  
c. 76 (Roman Catholic Charities), 549.  
c. 94 (Uniform Administration of Estates), 941.  
c. 97 (Mercantile Law), 909.
- 20 & 21, c. 54 (Fraud), 898.  
c. 57 (*Feme Covert*), 23, 35, 637, 741.  
c. 76 (Roman Catholic Charities), 549.  
c. 77 (As to the Court of Probate), 223, 224.  
ss. 91, 77 . . . 35 note (m).<sup>v</sup>  
c. 85 (Protection Order), 346, 752, 757.
- 21 & 22, c. 51 (Roman Catholic Charities), 549.  
c. 94, ss. 2, 21 (Copyholds), 596.  
c. 95, s. 16 (Probate), 202.  
s. 22 . . . 223.  
c. 108 (Protection Order), 346, 757.
- 22 & 23, c. 35 (Lord St. Leonards' Act), 420 *et seq.*  
s. 13 . . . 432.  
s. 14 . . . 463, 469.  
s. 15 . . . 464.  
s. 16 . . . 467 *et seq.*  
s. 17 . . . 464.  
s. 18 . . . 464, 469.  
s. 21 . . . 651.  
s. 22 . . . 811.  
s. 23 . . . 293, 451, 464, 467, 468, 475.  
s. 26 . . . 354.  
s. 27 . . . 446.  
s. 29 . . . 362, 906.  
s. 30 . . . 352, 618.  
s. 31 . . . 274.  
s. 32 . . . 307, 308, 329.  
s. 33 . . . 329.  
c. 39 (Indian Loan Act), 307.  
c. 50 (Roman Catholic Charities), 549.  
c. 61, s. 5 (Divorce), 670, 785.
- 23 & 24, c. 34 (Petitions of Right), 30.  
c. 38 (Law of Property Amendment Act), 362, 811.  
s. 1 . . . 687.  
s. 3 . . . 831.  
s. 4 . . . 831.  
s. 5 . . . 811.  
s. 9 . . . 352, 618.  
s. 10 . . . 308.  
s. 11 . . . 315.
- 23 & 24, c. 38, s. 12 . . . 307, 313, 329.  
s. 13 . . . 871.  
s. 14 . . . 362.

[The paging refers to the [\*] pages.]

STATUTES—*continued.*Victoria—*continued.*

- 23 & 24, c. 124, s. 20 (Renewal of Leases), 366.
- c. 134, s. 5 (Roman Catholic Charities), 549.
- c. 136 (Endowed Charities), 537, 540, 547, 852, 932, 933.
- s. 16 . . . 259.
- c. 145 (Trustees and Mortgagees), 583.
- s. 1 . . . 434, 437.
- s. 2 . . . *ib.*
- s. 8 . . . 366.
- s. 9 . . . 366, 571.
- s. 11 . . . 581.
- ss. 11—16 . . . 431.
- s. 12 . . . 270.
- s. 25 . . . 315.
- s. 26 . . . 586.
- s. 27 . . . 472, 608, 647, 657.
- s. 28 . . . 657.
- s. 29 . . . 293, 452, 475.
- s. 30 . . . 591.
- s. 34 . . . 293, 431, 647, 648.
- 24, c. 9 (Charitable Uses), 96.
- 24 & 25, c. 94 (Accessories and Abettors), 898.
- c. 96 (Fraudulent Trustees' Punishment Act), 898.
- 25 & 26, c. 17 (Charitable Uses), 96.
- c. 37, s. 10 (Crown Private estates), 1013.
- c. 63 (Merchant Shipping), 166.
- c. 89, s. 30 (Trusts of Shares), 970.
- c. 108 (Sale, Minerals), 432.
- 26 & 27, c. 106 (Charitable Uses), 96.
- 27 & 28, c. 13 (Charitable Assurances, Inrolment), 96.
- c. 112 (Judgments), 327, 809, 811 *et seq.*, 817.
- c. 114 (Improvement of Land Act), 329, 330, 577.
- 28, c. 43 (Ireland), 246.
- 28 & 29, c. 99 (County Courts' Equity Jurisdiction), 998, 1008, 1045.
- c. 104, s. 48 (Crown Debts), 809, 812.
- 29 & 30, c. 57 (Charitable Assurances, Inrolment), 96.
- 30 & 31, c. 102 (Voting for Parliament), 235.
- c. 132 (East India Stock), 307, 308, 315.
- c. 142, s. 8 (County Court), 361, 362.
- s. 24 (Trust Funds), 329, 1008.
- c. 144, s. 1 (Policies), 453.
- 31 & 32, c. 44 (Mortmain), 97.
- c. 109 (Church Rate Abolition), 88, 316, 542.
- 32 & 33, c. 46 (Assets), 206, 238, 525, 831.
- c. 56 (Endowed Schools), 536.
- c. 62, s. 4 (The Debtors' Act, 1869), 900, 916.
- c. 71, s. 6 (Petition in Bankruptcy), 513, 514, 906.
- s. 15 (Trust estates), 243.
- (Order and Disposition), 239.
- (Choses in Action), 221
- s. 17 . . . 239.
- s. 49 (Discharge), 916, 992.
- s. 91 (Bankruptcy of Settler), 128, 218.
- c. 106, s. 16 (East India Loan), 308.
- s. 117 (New Trustees), 883, 1028.

[The paging refers to the [\*] pages.]

STATUTES—*continued.*

Victoria—*continued.*

- 32 & 33, c. 110, s. 12 (Majority of Trustees), 259, 540.  
s. 15 (Buildings for Religious Purposes), 534.
- 33, c. 34 (Naturalization Act, 1870), 45, 733, 950, 1031.  
c. 23 (Forfeiture & Escheat), 28, 225, 283, 821, 950, 1036.
- 33 & 34, c. 34 (Investment on Real Securities), 313, 542,  
c. 56 (Improvement of Land), 577.  
c. 93 (Married Women's Property Act), 24, 768, 788  
*et seq.*
- c. 97, ss. 8, 78 (Stamp Act), 653.
- 34, c. 13 (Mortmain), 97.  
c. 27 (Debenture Stock), 320.  
c. 44, ss. 4, 6 (Paymaster General), 360.
- 34 & 35, c. 47, s. 13 (Consolidated Stock of Metropolitan Board  
of Works), 316.  
c. 86 (Regulation of Forces), 708.
- 35 & 36, c. 24, (Charitable Trustees Incorporation Act), 499, 500.  
s. 13 (Inrollment), 96.
- 36, c. 17 (East India Loan), 309.
- 36 & 37, c. 66 (High Court of Justice), 17, 234, 362, 453, 530,  
574, 618, 699.  
s. 17 . . . 530.  
s. 24 . . . 16, 38, 187, 678.  
ss. 24, 25 . . . 17.  
s. 25, pl. 6 . . . 997.  
s. 25, sub-sec. 2 (Express Trusts), 885.  
sub-sec. 3 (Waste), 190, 421, 910.  
sub-sec. 6 (Choses in Action), 72, 695, 698,  
712.  
sub-sec. 11 (Rules of Equity prevailing),  
257.
- s. 32 . . . 17.
- ss. 33, 34 . . . 17.
- s. 34 . . . 528, 530, 618.
- s. 67 . . . 362.
- s. 76 . . . 917.
- 37 & 38, c. 50 (Married Women's Property Amendment Act),  
790.  
c. 57 (Real Property Limitation), 874 *et seq.*, 901.
- c. 78 (Vendor and Purchaser), 399, 400, 453.  
s. 1 . . . 438, 500, 902.  
s. 2 . . . 438, 500.  
s. 3 . . . 438.  
s. 4 . . . 221.  
s. 5 . . . 221.  
s. 6 . . . 34.  
s. 7 . . . 16, 863.
- c. 83 (Judicature Act), 17.
- c. 87 (Endowed Schools Commissioners), 535, 537.
- 38 & 39, c. 77 (Judicature Act), s. 10 . . . 521, 1013.
- c. 83 (Local Loans Act), 320.
- c. 87, s. 48 (Land Transfer Act), 221.  
s. 129 . . . 16, 863.
- c. 89, s. 28 (Public Works Loans Act), 997.
- 40 & 41, c. 31 (Reservoirs), 577.  
c. 33 (Contingent Remainders), 383, 384.

[The paging refers to the [\*] pages.]

STATUTES—*continued.*Victoria—*continued.*

- 40 & 41, c. 51, s. 18 (East India Loans), 308.
- c. 57, s. 28, sub-sec. 6 (Ireland), 72.
- c. 59, s. 12 (Colonial Stock), 322.
- 40 & 41, c. 18 (Settled Estates Act, 1887), 677.
- s. 23 . . . 590.
- 41, c. 19 (Protection Order), 346, 757.
- 41 & 42, c. 54 (Debtors' Arrest), 917.
- c. 59 (Civil Procedure Acts Repeal) 28, 699.
- c. 60 (East India Loan), 309.
- s. 18 . . . 308.
- c. 78 (Supreme Court) . . . 1005.
- c. ccvi. (East Indian Railroad Company Purchase Act) . . . 316, 322.
- 43 Vict. c. 10, s. 14 (East India Loan), 308.
- 44 & 45, c. 41 (Conveyancing and Law of Property Act, 1881).
- 248, 608.
- s. 3 . . . 439, 440, 500, 663.
- s. 4 . . . 2, 943, 1011, 1016.
- s. 7 . . . 442.
- s. 8 . . . 353.
- s. 9 . . . 443, 444.
- s. 13 . . . 440.
- s. 17 . . . 330.
- s. 19 . . . 331, 432, 581.
- s. 30 . . . 12, 15, 196, 204, 222, 226, 229, 233, 236, 237, 250,
- 943, 1017, 1018, 1019, 1034.
- s. 31 . . . 431, 648, 649, 657, 659, 662, 664.
- ss. 31, 32 . . . 251.
- s. 32 . . . 653, 654.
- s. 33 . . . 472, 608, 646.
- s. 34 . . . 652, 654.
- s. 35 . . . 434, 435, 436, 437.
- s. 36 . . . 294, 452, 464, 475.
- s. 37 . . . 591.
- s. 38 . . . 261, 612.
- s. 39 . . . 25, 785.
- s. 40 . . . 39.
- s. 42 . . . 129.
- s. 43 . . . 582, 584, 586.
- s. 47 . . . 354.
- s. 49 . . . 687.
- s. 50 . . . 651.
- s. 51 . . . 109.
- s. 52 . . . 610.
- s. 56 . . . 448.
- s. 59 . . . 206.
- s. 61 . . . 232.
- s. 65 . . . 328, 596, 784.
- s. 66 . . . 129, 440.
- s. 71 . . . 294, 315, 452, 591.
- 45 & 46, c. 38, s. 2 (Settled Land Act), 471, 550, 553, 558, 621.
- See title SETTLED LAND ACTS.
- s. 3 . . . 129.
- s. 4 . . . 129.
- s. 5 . . . 568.
- s. 6 . . . 129, 190, 503, 683.

[The paging refers to the [\*] pages.]

STATUTES—*continued.*Victoria—*continued.*

- 45 & 46, c. 38, s. 11 . . 190, 503, 561, 683.  
 s. 15 . . 560.  
 s. 17 . . 433.  
 s. 20 . . 685.  
 s. 21 . . 290, 311, 470, 562, 563.  
 s. 22 . . 564, 565.  
 s. 23 . . 565.  
 s. 24 . . 565.  
 s. 25 . . 560, 575.  
 s. 26 . . 561, 575.  
 s. 32 . . 311, 562.  
 s. 33 . . 505, 562.  
 s. 34 . . 299, 565.  
 s. 35 . . 190, 432, 502, 560, 561, 574, 578, 683.  
 s. 36 . . 636.  
 s. 37 . . 566, 684.  
 s. 38 . . 551, 552, 788.  
 s. 39 . . 552.  
 s. 40 . . 567.  
 s. 41 . . 567.  
 s. 42 . . 559, 567, 568, 578 *et seq.*, 585.  
 s. 43 . . 567, 585, 636.  
 s. 44 (Settled Land Act), 552, 568.  
 s. 45 . . 428, 557 *et seq.*  
 s. 50 . . 556.  
 s. 51 . . 556.  
 s. 52 . . 556.  
 s. 53 . . 429, 556, 557.  
 s. 56 . . 470, 555, 556, 620 *et seq.*  
 s. 58 . . 471, 553 *et seq.*, 621, 622.  
 s. 59 . . 575.  
 s. 60 . . 433, 569, 575.  
 s. 61 . . 569.  
 s. 62 . . 471, 552.  
 s. 63 . . 569, 570, 623 *et seq.*  
 s. 64 . . 366, 434, 436, 437.  
 s. 66 . . 427.  
 c. 39 (Conveyancing Act, 1882).  
 s. 2 . . 500.  
 s. 5 . . 667, 1030.  
 s. 6 . . 607.  
 s. 7 . . 22.  
 s. 11 . . 328, 596.  
 c. 50 (Municipal Corporations Act), 852.  
 c. 51 (Government Annuities Act, 1882), 32.  
 c. 75 (Married Women's Property Act, 1882), 24, 25, 39, 102, 200,  
 225, 496, 497, 736, 769, 779 *et seq.*, 787, 956, 1021.  
 s. 1 . . 33, 69, 119, 474, 755, 759, 760, 762, 765, 767, 772,  
 779, 790, 791.  
 s. 2 . . 23, 474, 751, 755, 779.  
 s. 3 . . 791.  
 s. 4 . . 922.  
 s. 5 . . 23, 474, 751, 755, 779, 1021.  
 s. 6 . . 791.  
 s. 7 . . 792.  
 s. 8 . . 33, 792.

[The paging refers to the [\*] pages.]

# STATUTES—continued.

## Victoria—continued.

- 45 & 46, c. 75, s. 9 . . . 792.  
     s. 10 . . . 69.  
     s. 11 . . . 792.  
     s. 13 . . . 793.  
     s. 14 . . . 793.  
     s. 15 . . . 793.  
     s. 18 . . . 983, 1021.  
     s. 19 . . . 785.  
     s. 21 . . . 793.  
     s. 24 . . . 33, 474, 983.  
 46 & 47 c. 36 (City of London Parochial Charities), 537.  
     c. 49 (Civil Procedure Repeal), 352, 699.  
     c. 52, s. 4 (Bankruptcy Act, 1883), 80, 513, 514.  
         s. 6 . . . 514, 906.  
         s. 30 . . . 916, 992.  
         s. 44 . . . 242, 243, 702, 904.  
         ss. 44, 45 . . . 26.  
         ss. 44, 54 . . . 239.  
         s. 45 . . . 816.  
         s. 47 . . . 78, 80.  
         s. 48 . . . 515.  
         s. 125 . . . 521, 831, 832.  
         s. 145 . . . 795.  
         s. 147 . . . 850, 1028.  
     c. 57, ss. 85, 87 (Patent Designs and Trade Marks), 167.  
     c. 61, s. 26 (Agricultural Holdings Act), 793, 794.  
         s. 29 . . . 563, 575.  
         s. 31 . . . 596.  
         s. 40 . . . 547.  
         s. 42 . . . 596.  
         s. 43 (Agricultural Holdings Act), 595.  
 47 & 48, c. 18, s. 4 (Settled Land Act), 561.  
     s. 5 . . . 428, 561.  
     s. 6 . . . 623, 624.  
     s. 7 . . . 625.  
     s. 8 . . . 553.  
     c. 54, ss. 20, 23 (Yorkshire Registries Act), 500, 687.  
     c. 71 (Intestates Estates Act, 1884), 822.  
         s. 4 . . . 11, 12, 161, 282, 283, 823.  
         s. 5 . . . 44, 1040.

# STATUTE MERCHANT.

tenant by, bound by a trust, 9.

# STEP-FATHER.

may place himself *in loco parentis*, 402.

# STEWARD.

infant cannot be steward of manor, 37.

manor, trustee of, appoints, but must observe directions of c. *q. t.*, 234.

# STOCK.

Bank of England cannot be trustee of, 32.

officer of, direction to, to transfer, 1021.

charging order on, under 1 & 2 Vict. c. 110, effect of, 806 *et seq.* See

## CHARGING ORDER.

co-executor concurring in transfer of, not liable, 272.

conversion of, persons interested in expectancy, when entitled to, 300.

creditor, how available to, 806 *et seq.* See CHARGING ORDER.

[The paging refers to the [\*] pages.]

# STOCK—continued.

- distringas, writ of, applicable to, 970 *et seq.* See **DISTRINGAS.**
- dividends of, may be received by one co-trustee, 225, 260. See **DIVIDENDS.**
- cestui que trust put in possession of, by power of attorney, 684.
- vesting order as to right to receive, 1014 *et seq.*, 1041, 1042. See **TRUSTEE ACTS.**
- execution, liable to be taken in, under 1 & 2 Vict. c. 110, 80, 773, 796
- executors and administrators, how transferred by, 32.
- gift of, by transfer into joint names of settlor and stranger, effect of, 146.
- incumbrancer, priority of, over judgment creditor, 246 note (*f*).
- investment in, 334 *et seq.* See **INVESTMENT.**
- irregularity in issue of, transferee when affected by, 687.
- legal title alone recognised, 670.
- married woman, of, settled to separate use is liable for her engagements, 773.
- married woman trustee of, may transfer as if she were *feme sole*, 36.
- Married Women's Property Acts, provisions of, as to stock of married woman, 789, 791.
- mortgage to replace, whether trustees should lend on, 323, 324.
- new trustee, how vested in, 650, 652, 654.
- private company, trust money must not be invested upon stock of, 307.
- public, investment upon, 307 *et seq.* See **INVESTMENT.**
- purchase of, in name of child, raises presumption of advancement, 179.
- purchase of, in name of stranger, gives rise to resulting trust, 163.
- receipt for, power to give, does not authorize receipt for cash, 453.
- restraining order under 5 Vict. c. 5, sect. 4, 971 *et seq.* See **CHARGING ORDER.**
- resulting trust on transfer of, 145.
- sale of, all trustees must concur in, 260.
- tortious, proof for, in bankruptcy of trustee, 912.
- settlement of, in fraud of creditors, defeasible under 13 Eliz. c. 5, 80.
- specific legatee of, entitled to dividends, 299.
- transfer of, at Bank of England, on production of probate or letters of administration, 32.
- to mortgagor, by trustees in lieu of selling and paying over proceeds, 573, 574.
- whether operating as gift or resulting trust, 145, 146.
- transferee of, whether affected by notice of trust, 697, 859.
- trust of, when perfectly created, 69, 73.
- trustee liable for neglecting to enforce transfer of, 902, 903.
- vesting order as to, 1014 *et seq.*, 1041 *et seq.* See **TRUSTEE ACTS; VESTING ORDER.**
- voluntary settlement of, when void as against creditors, 80.

# STOCKBROKER.

- trust money in hands of, may be followed into hands of trustee in bankruptcy, 241.

# STOP-ORDER, 711, 712.

- charging order not a necessary preliminary, 808 note (*c*).
- creditor may obtain, within six months after charging order, 808.
- practice as to obtaining, 712, 1000.
- priority when gained by obtaining, 711, 712.

# STRANGER.

- advancement for, whether presumed when purchaser has placed himself *in loco parentis*, 178.
- purchase in name of, resulting trust when created by, 163 *et seq.* See **RESULTING TRUST.**

[The paging refers to the [\*] pages.]

# STRICT SETTLEMENT.

direction for, 507, 508.  
female, upon, how to be framed, 126.  
meaning of term, 507, 508.

# SUBPCENA.

issue of, before bill filed under old practice, 971.  
origin of, as remedy of *c. q. t.*, 1.  
formerly lay against trustee only, and not against heir or assign, 2.  
*secus*, in modern times, 2.  
remedy by *c. q. t.* limited to, 16.

# SUBSCRIPTIONS.

promised by testator, executor cannot pay, 590.

# SUCCESSION DUTY.

accounts necessary for discharge of, expense of, payable by tenant for life, 683.  
attaching on money does not prevent trustee for sale making good title, 440, 441.  
trustee is liable for, 685.

# SUIT. See ACTION.

# SUMMONS.

opinion of Court for, 618.  
originating, for determining questions, 620.  
Settled Land Act, 1882, for determining questions arising under, 620.

# SUPERSTITIOUS PURPOSES.

trusts for, void, 105.

# SUPERSTITIOUS USE.

whether Crown may prove, by parol, 54.

# SUPPLYING WORDS.

marriage articles, in, 117; and see 155.

# SUPREME COURT OF JUDICATURE, 17.

# SURFACE.

sale of, apart from minerals under 25 & 26 Vict. c. 108, 433.

# SURRENDER.

contingent remainders not now destroyed by, 121, 383.  
copyholds, of. See COPYHOLD.  
to use of will, 721.  
power to accept, conferred by Settled Land Acts, 555.

# SURVEYOR.

Lands Clauses Act, under, trustees cannot appoint one of themselves to be, 258.  
lien of trustee for expenses of surveying estate, 638.  
trustee, employed by, is not entitled to lien on trust estate, 641.  
trustees should employ separate, on lending money on real security, 324.

# "SURVIVING" TRUSTEE, 655, 657, 658.

# SURVIVORSHIP.

bare authority, none of, *secus* authority coupled with interest, 261.  
committeeship of lunatic, of, 261.  
executorship or administratorship, of, 261.  
guardianship, of, 261.  
married woman's right of, 744 *et seq.*  
power of sale in mortgage, of, 603.  
powers of trustees, of, 600 *et seq.*, 604, 607, 610 *et seq.* See POWER.  
trust, of, 261, 262; even where there is power to appoint new trustees, 262, 263, 431.  
trust for sale, of, 430, 431.  
uncertainty as to, power to make vesting order in case of, 1018, 1019.



[The paging refers to the [\*] pages.]

TACKING, 330. See MORTGAGE.

TAXATION. See COSTS.

cestui que trust, when directed at instance of, 642.

TAXES. See RATES.

TECHNICAL TERMS.

how far necessary for creation of express trusts, 108, 109.

their force when employed, 109.

TENANT AT WILL.

building on landlord's land with his connivance, 717.

cestui que trust is, to trustee, 677, 881.

determination of tenancy by, 881.

Limitations, Statute of, provisions of, as to, 881.

renewal of lease by executor of, effect of, 182.

TENANT FOR LIFE.

advancement of, power to apply trust fund for, 589, 590.

alienation by, effect of, on exercise of power vested in him, 668.

appointing improper person trustee is personally liable for costs of removing him, 669.

apportionment of purchase-money as between, and remaindermen, 430, 565, 566. See APPORTIONMENT.

of value of reversion, 305.

bankruptcy of, effect of, 589, 683.

breach of trust, instigating, liability of, 910.

participating in, his interest may be stopped for compensation, 911.

business, of, must make good losses during previous life tenancy, 683.

charge, paying off, *prima facie* no merger, 731. See MERGER.

chattels or heirlooms, his rights as to, 683, 684.

consent of, to investment by trustees, 311, 318.

discretion of trustees not dispensed with, 291, 318.

when necessary, under Settled Land Act, 470, 622 *et seq.*

contingent legacy, tenant for life of residue entitled to income, until contingency happens, 302.

contract by, to grant lease, power of trustees to effectuate, 606.

conversion, his proportion in income accruing before, 301 *et seq.*

rents accruing before, to be received by tenant for life, 949.

wrongly receiving whole income, he is liable to refund, 357.

copyholds, fine on admission to, how to be borne, 378, 379.

costs incurred by, in protecting estate, allowed to trustees, 636.

costs occasioned by his encumbering his estate, his liability for, 673.

covenant for title by, 442.

debts and legacies, out of what payable as between tenant for life of residue and remainderman, 302.

dividends, apportionment of, on change of investment, 323.

possession of, how tenant for life put in, 684.

favour to, trustees should not show, 291, 317, 318, 333, 428.

fines on copyholds, is entitled, to, 682.

on renewal of leases, when entitled to, 682.

forfeiture by, by feoffment of fee simple, 821.

household goods, his right to use, 683, 684.

improvements and repairs by, 574, 575 *et seq.*

income of, in respect of debts recovered, 300, 914.

income, tenant for life wrongly in possession of, is accountable, 334.

incumbrance, effect of tenant for life purchasing, 280, 731.

investment with consent, application of statutory powers to, 311.

refusal of tenant for life to consent does not justify retention of improper security by trustee, 291, 318.

lease by, 555, 557, 606.

[The paging refers to the [\*] pages.]

# **TENANT FOR LIFE**—*continued.*

- leaseholds, of, to what income entitled, 299, 304, 682.
- married woman, rights of, 740, 744.
- minerals, power of tenant for life to work or sell, 190, 433.
- mines, power of tenant for life to lease, 503, 683.
- right of tenant for life to rents and royalties, 682.
- partnership, share in, tenant for life to what income entitled in respect of, 304.
- personal security, trustees should not lend to him on, 316, 317.
- possession, equitable tenant for life when entitled to, 675, 676.
- on giving security for discharge of prior incumbrances, 675.
- powers, whether exercisable by, after alienation of estate, 668.
- protector of settlement, equitable tenant for life may be, 682.
- purchase by, from trustees for sale, 317 note (a), 485, 503.
- purchase from, by trustees for purchase, 503.
- rates and taxes, must pay, 683.
- real estate, his rights in, 675 *et seq.*
- receiver appointed by Court, expense of, falls on, 984.
- refund, must, where overpaid, 357.
- renewable leaseholds, of—**
  - fines on renewal, how provided for as between tenant for life, and remainderman, 371 *et seq.*
  - underleases, on, tenant for life entitled to, 371.
  - neglect to renew, liability in case of, 378, 854.
  - refusal by, to renew, 378, 379, 854.
  - renewal of lease by, in own name, effect of, 181 *et seq.*, 363.
  - reversion, of, of lease annually renewable, rights of, as regards income, 682.
- repairs by, 574 *et seq.*; neglects to repair, 574. See WASTE.
- request by, to exercise of power, 428, 429.
- residue, of, to what income entitled, 298, 300 *et seq.*
- reversionary interest, or what proportion of proceeds attributable to, 305.
- sale by, to trustees for purchase, 503.
- sale by, under powers of Settled Land Act, 428, 429.
- with concurrence of trustees, 430.
- Settled Land Act, powers of tenant for life under, 129, 428, 429, 436, 470, 553 *et seq.*, 622 *et seq.*, 682, 683. See SETTLED LAND ACTS.
- specifically bequeathed property, of, is entitled to full income, 289.
- or where intention expressed that he should enjoy in specie, 299, 300.
- stock, apportionment of dividends, on change of investment of, 323.
- succession duty, must bear expense of accounts in respect of, 683.
- timber, power of tenant for life to cut, 187 *et seq.*, 502 note (e), 574, 682, 683. See WASTE.
- title deeds, duty of tenants for life to produce, 192.
- rights of equitable tenant for life as to custody of, 679.
- trade, where trust estate employed in, to what income tenant for life entitled, 304.
- trust for sale, he may buy under, though his consent be necessary to sale, 503.
- trustee, not appointed, under Settled Land Act, 41, 666.
- trustee for sale, tenant for life who is, cannot profit by postponing sale, 304.
- Trustee Act, is not person "absolutely entitled" under, 1022.
- except as regards income only, 1022.
- Trustee Relief Acts, petition by tenant for life under, 999, 1000, 1004.
- underwoods and thinnings of plantations, he is entitled to, 682.
- waste by, 187 *et seq.*, 574. See WASTE.
- waste, when to be made punishable for, 507, 508.

[The paging refers to the [\*] pages.]

## TENANT IN COMMON.

- adwoson, of, must cast lots for presentation, 276.
- devise to co-tenants, may be good as to one and void as to another, 63.
- whether trust estates will pass under, 228.
- election by, 957. See ELECTION.
- equitable, injunction against co-tenant, cutting timber, 679.
- implication of tenancy in common, 164, 165.
- in case of joint loan, 164.
- or where two possessed of mortgage term purchase equity of redemption, 164.
- in joint purchase where purchasers contribute unequally, 165.
- or in joint undertaking in trade, 164, 165.
- mortgagee, tenant in common of equity of redemption, time does not run against, 866.
- presumption of ouster does not arise between equitable tenants in common, 869.

## TENANT IN TAIL.

- assignment of equitable interest by, 693 *et seq*
- charge, paying off, when presumed to intend merger, 731, 732.
- chattels, bequest of, to tenant in tail who shall first attain twenty-one, void, 98.
- disentailing assurance by, under Fines and Recoveries Act, 381, 382, 694.
- election by, 957 *et seq*. See ELECTION.
- equitable, cannot require trustee to convey legal fee, 685.
- equitable recovery, effect of, 14, 694.
- estate *pur autre vic*, of, powers of alienation of, 694, 695.
- executory trust, for A. for life and after his disease to the heirs of his body, 118.
- payment out of Court to, under Lands Clauses Act, 960, 961.
- Settled Land Act, powers of tenant in tail under, 553, 554.
- trust for management during minority of, when void for remoteness, 97.
- Uses, Statute of, not applicable to seisin of, 6.

## TENANT TO PRÆCIPE, 380., 382.

## TENANT, YEARLY.

- renewing lease, is trustee for remainderman, 182.

## TERM OF YEARS.

- attendant, 95, 250 note (1). See ATTENDANT TERM.
- charge, to secure, when barred under Statutes of Limitation, 880, 883.
- long, may be converted into fee, 328 note (a).

## TERMINABLE SECURITIES.

- duty of trustees to convert, 298, 299, 300.
- investment in, by trustees, 320.

## TERROR.

- confirmation or release must not be obtained by, 496, 498, 926.

## TESTAMENTARY DISPOSITION. See WILL.

## TESTAMENTARY EXPENSES.

- costs of administration action are, 644.
- costs of taking opinion of Court, *quære*, *ib*.
- priority of, in administration of estate in bankruptcy, 832.

## THEFT.

- trust property, of, trustee when liable for, 294.

## THELLUSSON ACT, 90 *et seq*. See Appendix by WM. C. SCOTT.

- charge void under, sinks into land, 92, 93.
- exceptions from the Act, and their construction, 93, 94.
- excess, to whom it belongs, 91, 92.
- results for benefit of heir's personal representative, 92.

[The paging refers to the [\*] pages.]

# THELLUSSON ACT—*continued*.

- implied direction for accumulation, *semble*, Act applies to, as well as to express direction, 91.
- Ireland, Act does not apply to, 94.
- Irish property, when applicable to, 94.
- periods of accumulation permitted by,
  - accumulation can be for one only of the periods, 90, 91.
  - period commencing after testator's death, must end at 21 years from such death, 91.
- premiums on policy, direction to pay, out of income, 94.
- residue, when void accumulations fall into, 92.
- Scotland, the Act has been extended to, 94.
- simple accumulation, Act applies to as well as compound, 90.
- subsequent limitations not in general accelerated, 92.
- suspension of actual enjoyment of income, Act applies although right to enjoyment is not suspended, 90.
- trust exceeding limits of Act, but not of common law, is good *pro tanto*, 91.
- void accumulations, who entitled to, 92.
  - residue, of, result to heir at law or next of kin, 92.
- Wills Act, under, void accumulations go to residuary devisee or legatee, 92, and where residue is settled form capital, *ib*.

# THINNINGS OF WOOD,

- tenant for life when entitled to, 189 note (b), 682.

# TIMBER. See WASTE.

- account of, in equity on legal title without injunction, 886.
- improperly felled, account in respect of, 188, 574.
- infant's estate, on, 578. See INFANT.
- proceeds of, whether realty or personalty, 967, 969.
- interest when charged in respect of proceeds of, 188, 578.
- larch plantations blown down, application of proceeds of, 189 note (b).
- lunatic's estate, on proceeds of, how applicable, 964 *et seq*. See LUNATIC.
- portions when raisable by sale of, 418, 420.
- produce of, directions touching, excepted from Thellusson Act, 93.
- property in, when felled, to whom it belongs, 188, 189.
- purchase of timbered estate by trustees, improper, 502.
- repairs, legal tenant for life may cut for, 574.
  - quære* whether trustee may also do so, 574.
- sale of, by trustees separately from estate, 433.
- sale of estate by trustees separate from timber is void, 432.
- tenant for life when trustee of proceeds of sale of, 188, 189.
  - powers of, to cut and sell timber, 187 *et seq.*, 502 note (c), 574, 577, 682, 683.
- timber estate, trustee may not buy, in favour of tenant for life *sans waste*, 502.
  - whether he may purchase generally, 502.
- trustee, power of, to cut timber, 574, 577; during minority of beneficial owner, 578.
- where holding on implied trust, 136.
- underwood treated as income, 682.
- windfalls belong to owner of first estate of inheritance, 189 note (1).

# TIME.

- bar by lapse of, 495, 496, 863. See LACHES; LIMITATION OF ACTION.
- creditor's deed, time limited in, is not of the essence, 522.
- notice of equitable incumbrance, for giving, 707.
- payment of fund into Court, what, allowed for, 981.
- portions, for ascertaining, parties entitled to, 386, 390, note, 393. See PORTION.
- power of sale, within what time exercisable, 458, 605, 606.

[The paging refers to the [\*] pages.]

# **TIME—continued.**

powers of executor or trustee, how affected by lapse of, 457, 458, 481, 482.  
 priority, how it affects, 713 *et seq.*, 862.  
 trust for sale, within what time it should be executed, 424, 457, 458.  
 trustee not entitled to allowance for, 627 *et seq.*

# **TITLE.**

adverse trustee cannot set up against *c. q. t.*, 285.  
 clearing, on sales, trustees may do all acts for, 440.  
 commencement of, which purchaser may require, 438.  
 conditions as to, on sale by trustee, 435, 436.  
 covenants for, by trustees and mortgagees, 441, 442.  
 duty of trustee to enquire into on lending money on real security, 324, 325.  
 good or marketable, what is, 500.  
 proof of, which purchaser may require, 438, 439, 440, 500.  
 receipt, power of vendor to sign, for purchase-money is question of title, 453 note (a), 663.  
 secret, person designedly concealing, may be precluded from setting up, 716.  
 sole trustee, objection to title on sale by, 663.  
 trustee for sale bound to make good title, 432.  
 trustee setting up his own, ordered to pay costs, 994.  
 trustees for purchasing must see to sufficiency of, 500, 501.  
 Trustee Act, Court cannot decide question of title under, 1009.

# **TITLE DEEDS.**

copies of *c. q. t.* entitled to, at own expense, 680.  
 covenant to produce, effect of, 192.  
     trustees when bound to enter into, 333, 442 *et seq.*  
 custody of, who entitled to, when legal estate in trustee, 679.  
*cestui que trust* entitled absolutely in possession, 680.  
 one of several trustees, may be committed to, 680, 681.  
 tenant for life, when entitled to, 679.  
 tenant in tail, when entitled to, 680 note (c).  
 trustee in bankruptcy of husband of legal tenant for life not entitled to, 680.  
 trustees of term for raising portions not entitled to, 421.  
 trustees should not part with, to settlor, 679.  
 deposit of, 48, 715, 862. See MORTGAGE, equitable.  
 holder of, how far a constructive trustee for remainderman or part owner, 192.  
     may gain priority over earlier incumbrancer, 714 *et seq.*  
     but not if deeds obtained wrongfully or by accident, 714.  
 inspection of, right of *c. q. t.* to, 680.  
 leaseholds, of, executor may hold, till debts paid, 680.  
 mortgagee improperly dealing with, may be postponed, 715.  
 production of, when purchaser entitled to require, 439 *et seq.*

# **TOOLS.**

investment on mortgage of, by trustees, 326.

# **TOMBS.**

trust for keeping up, effect of, 106; and see 107 note (a).  
     void unless charitable, *ex. gr.* for monument in church, *ib.*  
     for erection of monument to deceased person, valid, 106.

# **TORT.**

husband and wife cannot sue each other in, 761.  
 married woman may be sued for, as if *feme sole*, 769.

# **TORTIOUS.**

conversion of trust property, 241, 892, 963 *et seq.* See CONVERSION.  
     right to follow property, 892 *et seq.*  
 sale of land by trustees, 902.

[The paging refers to the [\*] pages.]

**TORTIOUS—continued.**

- of stock by trustees, proof in respect of, 912.
- timber, felling of, on estate of lunatic, 966.

**TRADE.**

- allowance for management given to constructive trustee, 629; *secus*, express trustee, 630.
- bank, money lodged in, to executor's account, considered to be traded with, 340.
- buildings used in, trustees should not lend half actual value on mortgage of, 325.
- direction to employ assets in, effect of, 581, 639, 916.
- executor might formerly have used assets in, 339, 340; *secus*, 340 *et seq.*, 479.
- following trust property employed in, 894, 916.
- investment in, when authorized, 319.
- loss, tenant for life when bound to pay, out of income, 683.
- married woman may carry on, separately from her husband, 788, 791.
- profits of, trustee when accountable to *c. q. t.* for, 276, 277, 894.
- tenancy in common implied on joint advance for, 164, 165.
- tenant for life of residue, right of, to income of trust estate employed in trade, 304.
- trustee carrying on, is amenable to bankruptcy law, 238.
  - pursuant to direction of testator, 581, 639, 916.
  - rights of creditors as against trust estate, 639, 916.
- trustee must not employ trust money in, 276, 277, 479.
  - so employing trust money, charged at option of *c. q. t.*, with profits, 340.
  - or interest at £5 per cent., 340, 342.
  - whether with compound interest, 342, 343.

**TRADE MARK.**

- equities in respect of, enforceable, 167.
- registration of, 167.
  - no notice of trust allowed on register, *ib.*

**TRADER, 510 *et seq.* See BANKRUPTCY; DEBT.**

**TRAITOR. See CONVICT; FORFEITURE.**

**TRANSFER.**

- action for administration, of, to Court of Bankruptcy, 832.
- mortgage, of, by trustees, 332, 333. See MORTGAGE.
- shares or stock, of, 32, 534, 574. See SHARES; STOCK.
- into Court, 976 *et seq.* See PAYMENT INTO COURT.
- under Trustee Relief Acts, 998, 999, 1007.

**TRANSMISSION.**

- trust money, of, to a distance, how to be effected, 256, 353, 354.

**TRANSMUTATION OF POSSESSION. Chap. VI., 67—83.**

- where there is, the trust, though voluntary, will be enforced, 67.
- and where there is not, if trust be perfectly created, 67.

**TRAVELLING.**

- expenses, trustee when allowed, 634.

**TREASON.**

- forfeiture in case of, 27, 818 *et seq.* See FORFEITURE.
- now abolished, 28, 821.
- outlawry upon, effect of, 250.

**TREASURY.**

- consent of, required to alienation by corporation, 22, 31.

**TROUBLE.**

- allowance for, may be made by special direction, 630, 631.
- will not cease on institution of suit, 631.
- amount of, where not known, settled by reference, 631.

[The paging refers to the [\*] pages.]

# **TROUBLE—continued.**

- annuity to trustee for, does not prevent allowance for expenses, 637.
- commission whether allowed to executor in East Indies, 628.
- when to trustees or mortgagees of West India Estates, 628.
- committee of lunatic not allowed to charge for, 628.
- contract by trustee with *c. q. t.* for allowance for, 631, 632.
- or with Court before acceptance of trust, 632.
- executor not allowed to charge for, 628.
- management of business, trustee not allowed salary for, 491, 630.
- mortgagee not allowed to charge for, 628.
- whether he may contract for allowance, 632.
- receiver not allowed to charge for, 628.
- settlor may direct allowance for, to be made to trustee, 630, 631.
- trustee not generally allowed to charge for, 491.

# **TRUE OWNER.**

- whether bare trustee is, within bankrupt laws, 244.

# **TRUST.**

- absolute gift or trust, words of recommendation whether giving rise to, 134, 135. See IMPLIED TRUST.
- acceptance of, 200 *et seq.*, 251, 252. See ACCEPTANCE OF TRUST.
- accumulation, for, 84 *et seq.* See THELLUSSON ACT. See supplementary chapter on TRUSTS FOR ACCUMULATION in Appendix by Wm. C. Scott, [\*] 1046.
- advantage by, trustee may not make, 275 *et seq.*
- adwoson, of, for parishioners, 85 *et seq.*
- right of presentation does not belong to trustee, 275.
- alienation, restriction of, not allowed by way of trust, 98 *et seq.*
- annexed in privy to the estate, 15.
- to the person, 16.
- assets, a trust is, 10, 872; whether formerly, 826. See ASSETS.
- assignment of equitable interest, 692 *et seq.* See EQUITABLE ESTATE.
- averrable at common law, 51; but averment must not contradict written instrument, *ib.*
- not where deed required to pass legal estate, 52.
- Bank of England does not take notice of, 32.
- bare trust and trust coupled with interest, 611. See BARE TRUSTEE
- cestui que trust, existence of, essential, 106.
- chapel, for, how created, 85; how administered, 531, 534.
- charges and expenses, allowance of, to trustee, 634 *et seq.* See EXPENSES.
- charitable or public trust, 20. See CHARITY.
- chattels, of, when perfectly created, 69.
- chose in action* anciently treated as, 8.
- church or chapel for, how effected in equity, 85.
- classification of, Chap. II., 18—20.
- common, with power annexed, 19.
- compulsory, is not, before acceptance, 196.
- condition distinguished from, 34.
- confidence, in what sense trust is, 13, 14.
- consideration for, 67 *et seq.* See CONSIDERATION.
- construction of, 108 *et seq.*
- constructive, Chap. X., 180—195. See CONSTRUCTIVE TRUST.
- contingent remainders, for preserving, Chap. XVI.; 380—384. See CONTINGENT REMAINDER.
- copyholds, of, 47, 721.
- creation of, Chap. III., 21—46. See CREATION OF TRUST.
- formalities required for, Chap. IV., 51—66.
- when perfect, 67.
- creditors, for, Chap. XX., 509—527.

[The paging refers to the [\*] pages.]

TRUST—*continued.*

- to defeat or delay, invalid, 77, 78, 81, 82.
- curtesy of, 11, 221, 733 *et seq.* See CURTESY.
- debts, for payment of, Chap. XX., 509—527. See DEBT.
- declaration of, when sufficient, 51, 53, 55 *et seq.* See DECLARATION OF TRUST.
- definition of, 13.
- delegation of, not permitted, 252, 253, 254, 275. See DELEGATION.
- descent of, 723, 823, 824. See DESCENT.
- devise of, 226 *et seq.*, 720 *et seq.*
- disclaimer of, 196 *et seq.* See DISCLAIMER.
- disclosure of, by trustees purchasing, 505.
- discretionary, 18. See DISCRETIONARY TRUST.
- dower of, 8, 11, 733 *et seq.* See DOWER.
- duration of, 20, 89, 97, 425.
- enforced, where consideration valuable, or if perfectly created, 67.
- equitable interest, of, when sufficiently created, 72, 73.
- escheat of, 11, 282, 822, 823. See ESCHEAT.
- estate, 20 *et seq.* See LEGAL ESTATE.
- estate tail, equitable, 47. See ENTAIL.
- execution of, causes and matters for, assigned to Chancery Division, 17.
- executory, 111 *et seq.* See EXECUTORY TRUST.
- express, Chap. VIII., sect. 1, 108—130. See EXPRESS TRUST.
- how affected by Statute of Limitations, 875 *et seq.*
- extent from Crown against, 817.
- extinguishment of, 425.
- failure of, for want of trustee, equity will not permit, 833 *et seq.*
- foreign property, of, 49.
- forfeiture of, 221, 247, 818 *et seq.* See FORFEITURE.
- Frauds, Statute of, how it affects trusts, 51 *et seq.* See FRAUDS, STATUTE OF.
- immoral, is void, 105. See UNLAWFUL TRUST.
- impeachable, 286, 346.
- imperfect gift not carried into effect as, 74.
- implied, Chap. VIII., sect. 2, 130—142. See IMPLIED TRUST.
- instrumental, explained, 18.
- intention by settlor to create, essential, 82.
- irrevocable, when, 515.
- judgments, how affected by, 245, 794 *et seq.*
- land discharged from, when money raised by trustee, 449.
- land, does not issue out of, 15.
- land, of, when perfectly created, 69.
- lands abroad of, 49.
- lawful, 19, Chap. VII., sect. 1, 84—94.
- legal estate, persons taking, when bound by, Chap. XII., sect. 3, 246—250.
- limitation of, compared with legal limitations, 46, 84 *et seq.*, 109.
- maintenance, for, how far valid as against creditors of *c. q. t.*, 99 *et seq.* See MAINTENANCE.
- ministerial, explained, 18.
- mixed power and trust, 19, 836.
- money followed into land, 169, 896, 897.
- mortmain, in, 96. See MORTMAIN; CHARITY.
- nature and origin of, 1, 7.
- notice of, 505, 506, 858 *et seq.* See NOTICE.
- obligatory, exercise of, is, 834.
- operation of law, by, 193.
- origin of modern trust, 1, 7.
- administered at first on principles of uses, 8, but afterwards treated as estates, 11.



[The paging refers to the [\*] pages.]

**TRUST**—*continued*.

- parishioners, for, 85 *et seq.*
- parol, may be declared by, when, 51, 65.
- peerage, of, cannot be created, 47 note (a).
- pension of, cannot be raised by parol, 52.
- perfect, when, 67, 68. See CONSIDERATION ; VOLUNTARY SETTLEMENT.
- performance of, 67.
- whether enforceable against Crown, 30.
- perpetuity, rule against, application of, to trusts, 89, 97, 98. See PERPETUITY.
- poor of parish, trust for, how carried into effect, 85, 531.
- post obit, 518
- power distinguished from, 19, 135, 451, 839 *et seq.* See POWER
- mixture of, and trust, 19, 600, 610, 611, 613.
- trust with power annexed distinguished from, 19.
- precatory, 130 *et seq.* See IMPLIED TRUST.
- principles governing, at present day, 11.
- private, 20.
- privity of estate, extent of term, as applicable to, 15.
- prize of war, grant by royal warrant to trustees, 22.
- profit by, trustee must not make, 275 *et seq.*
- properties of, in analogy to legal estates, Chap. XXVI., 692—832.
- property, what, may be made the subject of, Chap. IV., 47—61.
- public, explained, 20. See PUBLIC TRUST.
- information by Attorney-General when proper remedy, 31.
- purchase, for, Chap. XIX., 499—508. See PURCHASE.
- purchaser whether bound by, 246, 857 *et seq.* See PURCHASER.
- recommendation, whether raised by, 130 *et seq.* See PRECATORY TRUST.
- reference, by, how to be framed, 506, 507; how construed, 507, 508.
- relinquishment of, Chap. XXV., 645—673. See RELINQUISHMENT OF TRUST.
- renewable leaseholds, of, 180 *et seq.*, 363 *et seq.* See RENEWABLE LEASEHOLDS.
- repair, to, a window or monument in church valid as charitable gift, 106, 107.
- resulting, Chap. IX., 143—179. See RESULTING TRUST.
- retirement from, Chap. XXV., 645—673. See RELINQUISHMENT OF TRUST.
- revocable or irrevocable, 515, 516.
- rise and progress of trusts, 1 *et seq.*
- trusts at first modelled after pattern of uses 8.
- but afterwards treated as estates, 11.
- sale, for, 422 *et seq.* See SALE.
- secret, parol evidence when admissible, 62.
- seisin and disseisin of, 617.
- separate use of married woman, for, 753 *et seq.* See MARRIED WOMAN.
- settlor, who may be, 21 *et seq.* See SETTLEMENT.
- several estates, of, 642.
- shifting fee simple, 84.
- simple trust, 2, 18, 572, 674 *et seq.*, 827. See SIMPLE TRUST.
- special trust, 2, 18, 210, 572. See SPECIAL TRUST.
- specific appropriation, what amounts to, so as to create trusts 83, 240, 894, 912. See SPECIFIC APPROPRIATION.
- stock, of, when perfectly created, 69.
- survivorship of, 261, 262, 263, 430, 600. See SURVIVORSHIP.
- trustee, trust does not fail for want of, 833.
- uncertainty of object or subject of, effect of, 133, 134.
- unlawful, 19, 64, Chap. VII., sect. 2, 94—107. See UNLAWFUL TRUST.
- use, anciently known as a, 13.

[The paging refers to the [\*] pages.]

# TRUST—*continued.*

Uses, Statute of, special trusts not within, 6, 210.

validity of, trustee bound to assume, 286.

voluntary, 67 *et seq.* See VOLUNTARY SETTLEMENT; VOLUNTARY TRUST.

# TRUST ESTATE. See LEGAL ESTATE.

# TRUSTEE.

abroad, person domiciled, should not be appointed, 30, 40, 662, 847. See ABROAD.

absconding, removal of, 847, 1028.

absent, where trustee is, Court may make vesting order, 1021 *et seq.* See TRUSTEE ACTS.

acceptance of trust by, 200 *et seq.*, 251. See ACCEPTANCE OF TRUST.

account against, 674, 691. See ACCOUNT.

refused on ground of delay, &c., 871 *et seq.*

accountable for rents and profits, 674. See RENTS AND PROFITS.

accounts, trustee must be ready with his, 449, 691, 975, 976.

act or neglect of, does not vary rights of *c. q. t.* 938, 939, 963.

"acting," meaning of term, 258, 655, 665, 709.

actions when to be brought in name of, 234. See ACTION.

advantage, trustee may not make, by trust, 275 *et seq.*

adverse title, trustee cannot set up, against *c. q. t.*, 285.

advowson, of, 234, 275. See ADVOWSON.

agent, employment of, by trustee, 254. See AGENT.

alien may be, of chattels personal, 40.

formerly might not be of freeholds or chattels real, 40.

allowances to Chap. XXIV., 627—644. See COSTS; EXPENSES.

appointment of, 846 *et seq.*, 1027 *et seq.* See NEW TRUSTEES; TRUSTEE ACTS.

assign of, formerly not liable to execute use or trust, 2.

*secus* in later times, 246.

auctioneer, trustee who is, cannot make profit from trust, 280.

Bank of England cannot be, 32.

banker, trustee who is, cannot make profit by trust, 280.

bankrupt not absolutely disqualified from being, 40, 847 note (e).

bankruptcy of, 239, 242 *et seq.*, 658, 850, 912 *et seq.* See BANKRUPTCY.

bare trustee, meaning of term, 221 note (g). See BARE TRUSTEE.

beneficially interested, assignee of, bound by equities, 696.

bond given by, for due execution of trust, effect of, 252.

breach of trust by, Chap. XXIX., 846—856. 'See BREACH OF TRUST.

broker, trustee who is, cannot profit by trust, 280.

business of testator, carrying on, 581. See EXECUTOR; TRADE.

care to be taken by, 294.

cestui que trust can compel performance of duty by, 853 *et seq.* See CESTUI QUE TRUST.

cestui que trust should not be appointed, as a general rule, 40.

chapel, for, 531, 534, 852, 853.

charge, cannot generally, for personal services, 281.

charity, for, duties of, 530 *et seq.*

religious views of trustee whether to be regarded, 42, 847.

removal of, 848.

chattels personal, duties of trustees of, Chap. XIV., 287—362.

commission, when allowed to charge, 628, 629.

concurrence by, in sale with owners of other shares, 594.

contingent remainders, to preserve, duties of, Chap. XVI., 380—384.

"continuing," 658, 664.

exercise of power by, 606.

conversion of trust property, duties of trustee as to, 298, 334, 336, 935 *et seq.*, 963. See CONVERSION.

[The paging refers to the [\*] pages.]

**TRUSTEE**—*continued*.

- conveyance by, at request of *c. q. t.*, 508, 684 *et seq.*, of assignee of *c. q. t.*, 692.
- on sale, 441 *et seq.* See **CONVEYANCE** ; **SALE**.
- conveyance to, how to be framed, 505 *et seq.*
- copyholds, of, 235 *et seq.* See **COPYHOLD**.
- corporation, capacity of, to be, 31, 32.
- costs of, 985 *et seq.* See **COSTS**.
- co-trustees, liability of, for each other's acts, 263 *et seq.* See **Co-TRUSTEES**.
- counsel, advice of, when to be taken, 206, 346, 347. See **COUNSEL**.
- Court, powers of trustees appointed by, 471, 472.
- covenants by, on sale, &c., 441 *et seq.* See **COVENANT** ; **SALE**.
- creditors, for, duties, &c. of, 488, 509 *et seq.* See **DEBT**.
- Crown may be, but quære as to remedy of *c. q. t.*, 30.
- custody of chattels by, 294 *et seq.*
- debt of, has no priority over other debts, 524.
- when chattel may be taken in execution for, 224.
- debtor to estate, assignment of beneficial interest by, 696.
- debts, may not buy up, for himself, 276.
- power of trustee to compound, 591, 592.
- defaulting, when liable to attachment, 916 *et seq.* See **DEBTORS' ACT** ; **BREACH OF TRUST**.
- delegation of duty by, 252 *et seq.* See **DELEGATION**.
- devise by, of trust estate, effect of, 226 *et seq.* See **DEVISE**.
- devise to, when to be construed to pass fee simple, 220.
- implied by nomination as trustee, 215.
- devisee when to be deemed, 59, 60.
- disability of, to purchase trust property, 484 *et seq.*
- Trustee Acts, how remedied under, 1013 *et seq.* See **TRUSTEE ACTS**.
- discharge of, how obtained, Chap. XXV. 645—673. See **INDEMNITY** ; **RE-LEASE** ; **RELINQUISHMENT**.
- disclaimer by, effect of, 196 *et seq.*, 606, 607. See **DISCLAIMER**.
- distribution of trust fund by, Chap. XIV., sect. 6. 344—362.
- dividends, payment of, to two or more trustees, 260. See **DIVIDENDS**.
- domiciled, should be, within jurisdiction of Court, 30, 40.
- dower, to uses to bar, 687, 688. See **DOWER**.
- duties, how compelled to observe, 853 *et seq.* See **DUTY OF TRUSTEE**.
- enfranchisement by, 596.
- equitable interest, of, when entitled to conveyance, 688.
- estate of, Chap. XII., 209—250. See **LEGAL ESTATE**.
- executor when converted into, 204, 205, 481, 673.
- executor and trustee, duties of, 476, 525.
- expenses of, allowance of, 634 *et seq.* See **EXPENSES**.
- failure of, remedy of *cestui que trust* on, Chap. XXVIII., 833—845.
- failure of *c. q. t.*, 282 *et seq.*
- feme covert* may be, but not advisable to select her, 33.
- foreign domicile, person having, should not be appointed, 40.
- forfeiture by, effect of, 247. See **FORFEITURE**.
- fraud by heir devisee or legatee, trusteeship created by, 61.
- fraudulent, liability of, 898, 916. See **FRAUD**.
- gift cannot accept, from *c. q. t.*, 277.
- heir of, formerly not bound by trust, 2. See **HEIR**.
- secus* in later times, 2.
- whether he can disclaim, 196.
- whether he can execute trust, 230.
- husband held to be, for wife, of her separate property, 754, 834.
- husband of *c. q. t.*, sometimes appointed, 41.
- husband should not be, of his own marriage settlement, 41.

[The paging refers to the [\*] pages.]

TRUSTEE—*continued*.

- ignorance of, as to his true character, 244, 889, 904.
- impartial, should be, as regards interests of *c. q. t.*, 423, 850.
- implication, by, 831.
- implied trust, under, not so strictly bound as in a common trust, 136. See IMPLIED TRUST.
- improvements by, 575 *et seq.* See IMPROVEMENTS.
- 'incapable,' 658, 659.
- incumbrance on trust property, trustee cannot buy up, 276.
- infant ought not to be appointed, 37 *et seq.*
- injunction against, to restrain breach of trust, 855, 856. See BREACH OF TRUST.
- insurance against fire, duty of trustee to effect, 295.
- interest, trustee when charged with, Chap. XIV. sec. 5, 338—344. See INTEREST,
- investment of trust money by, Chap. XIV. s. 4, 306—337. See INVESTMENT.
- judgment against, effect of, 245. See JUDGMENT.
- judgment creditor of, execution by, against chattels, 224.
- lashes by, its effect as to right of *c. q. t.*, 520. See LACHES.
- legacy to, who is attesting witness of will, 275 note (c).
- legal estate taken by trustee, its devolution, properties and quantity, Chap. XII., 209—250. See LEGAL ESTATE.
- legal interest, when trust invalid unless it is actually vested in trustee, 69 *et seq.*
- legal personal representative, estate of trustee devolves on, 222, 226, 233.
- legal proceedings, may be compelled by *c. q. t.* to take, on having indemnity, 853. See ACTION.
- liability of, for breach of trust, 846 *et seq.* See BREACH OF TRUST.
- for acts of co-trustee, 263 *et seq.* See Co-TRUSTEES,
- lien of, for expenses, &c., 639, 640. See LIEN.
- limitation of action against, 873 *et seq.* See LIMITATION OF ACTION; LIMITATION, STATUTES OF.
- loss of trust property, when liable for, 294 *et seq.*
- majority of trustees binds minority in public trusts, 259, 540, 547, 592, 597.
- may pay money into Court under Trustee Relief Act, 361, 997, 1007.
- married woman may be, but not advisable to select her, 33, 34.
- effect of Married Women's Property Act, 1882, considered, 33, 34, 36.
- bare trustee, being, may convey or surrender, 36.
- stock, may transfer, as though *feme sole*, 36.
- merger of charge, assignment to trustee to prevent, 727, 731. See MERGER.
- misconduct by, a ground for his removal, 846, 847.
- mortgage by, 326 *et seq.* See MORTGAGE; INVESTMENT.
- mortgagee, how far he is, 15. See MORTGAGEE.
- new, appointment of, 846 *et seq.*, 1027 *et seq.* See NEW TRUSTEES; TRUSTEE ACTS.
- notice to, effect of, 345, 701 *et seq.* See NOTICE.
- when necessary, 701 *et seq.*
- number of trustees, 42, 43, 600, 601, 648, 659, *et seq.*, 846. See NEW TRUSTEES.
- safe rule is to appoint three, and keep number full, 43.
- office of, general properties of, Chap. XIII., 251—286. See OFFICE OF TRUSTEE.
- overpayment of *c. q. t.* by, effect of, 356, 357.
- partner of, when liable for his breaches of trust, 902, 913, 916.
- payment by, 344 *et seq.* See PAYMENT; RECEIPT.
- payment to, how to be made, 292, 447, 448, 473, 474.
- personal representative, estate of trustee devolves on, 222, 226, 233.

[The paging refers to the [\*] pages.]

# TRUSTEE—continued.

- persons competent to sustain character of, 29 *et seq.* See *infra*, **who may be**.
- portions, duties of trustees for raising, Chap. XVII., 385—421. See **POR-TION**.
- possession of trust estate, rights and duties of trustee as to, 285, 677, 881 882. See **POSSESSION**.
- power, when bound to exercise, 600, 834. See **POWER**.
- powers of, general, Chap. XXIII., 572—626. See **POWER**.  
special, 572.
- prepayment of *chose in action*, may accept, 288.
- privileges, &c., annexed to legal estate in, 234.
- production of documents by, 975, 976
- profit, must not make, by office, 275 *et seq.*
- proper number of trustees, 42, 43.
- purchase, for, duties of, Chap. XIX., 499—508. See **PURCHASE**.  
of trust estate by trustee, 484 *et seq.* See **PURCHASE**.
- qualification for office of, 29 *et seq.*
- quasi-trustee, 344, 580, 989.
- quorum, Court sometimes appoints, where trustees numerous, 260.
- receipt by, 264 *et seq.* See **RECEIPT**.
- receiver, cannot be, at salary, 280.
- refusal by, to act, 847.
- relative of *c. q. t.* objectionable as a rule, 41.
- relatives, near, *ex. gr.* two brothers objected to, 42.
- release, when entitled to require, 359. See **RELEASE**.
- religious society, of, statutory privileges of, 97.
- relinquishment of office by, Chap. XXIV., 645—673. See **RELINQUISHMENT**.
- removal of, for misconduct, &c., 846 *et seq.*, 1028, 1038. See **NEW TRUSTEES**.
- remuneration to, 631, 632.
- renewable leaseholds, of, duties of, Chap. XV., 363—379. See **RENEWABLE LEASEHOLDS**.
- renewal of lease, by, in own name, 180 *et seq.*
- renounce, cannot, having once accepted, 251, 252.
- repairs by, 504, 574, 575 *et seq.* See **REPAIRS**.
- retirement of, Chap. XXIV., 645—673. See **RELINQUISHMENT OF TRUST**.
- sale, duties of trustee for, Chap. XVIII., 422—498. See **SALE**.
- school, for, 533.
- separate use of married woman, for, when a necessary party, 771, 772.
- Settled Land Acts, under, duties of, Chap. XXII., 550—571.
- several trusts, appointment of separate trustees of, 666, 667.
- shares in company, of, 239.
- sole, 42, 355, 356, 431, 592. See **SOLE TRUSTEE**.
- solicitor, responsibility of trustee for acts of his, 252, 325. See **SOLICITOR**.
- solicitor to trust, son of, also a solicitor, objected to, 42.
- solicitor-trustee cannot charge for professional services, 281 *et seq.*, 630.
- sub modo*, vendor is trustee, for purchaser, 141, 142, 1011, 1012.
- suit by, 234. See **ACTION**.
- surviving, powers of, 261, 262, 600 *et seq.*, 607, 657, 664. See **SURVIVOR-SHIP**.
- tenant for life not appointed, under Settled Land Act, 41.
- title deeds, right to custody of, 679, 680.
- title, may require alleged *c. q. t.* to show, 349.
- tort, trustee *de son*, 207.
- tortious conversion by, 892 *et seq.*, 963 *et seq.* See **CONVERSION**.
- trade, employing trust fund in, accountable, 276, 277, 340 *et seq.*
- "true owner," whether he is, within order and disposition clauses, 244, 245.
- trust not permitted to fail for want of, 833,

[The paging refers to the [\*] pages.]

**TRUSTEE**—*continued*.

"trustee," use of word, whether devise implied by, 215.

Trustee Acts, within, who is, 1011 note (c).

Trustee Relief Acts, protection afforded by, 996 *et seq.* See **TRUSTEE RELIEF ACTS**.

"unable" to act, 659.

undivided share, of, powers of, 421, 594.

"unfit," 658.

validity of trust, trustee bound to assume, 286.

void deed, costs of trustee of, 640, 989.

vouchers, is entitled to custody of, 449.

want of, does not defeat trust, 833.

**who may be**, Chap. III., sect. 2, 29—43.

alien may be, of chattels personal, 40.

formerly might not be, of freeholds or chattels real, 40.

*secus* under the recent Act, 40.

Bank of England cannot be, 32.

bankrupt not absolutely disqualified, 40, 658, 847 note (e).

capable, must be, of taking and holding the trust property, 29.

cestui que trust or relative, not incapacitated but not desirable to appoint them, 40, 41.

charity, religious views of trustees when to be regarded, 42.

corporation may be, except where in contravention of Statute of Mortmain, 31, 32.

Crown may be, but quære as to remedy of *c. q. t.*, 30.

feme covert or sole may be, but undesirable and why, 33 *et seq.*

foreign domicile, person having, not generally a fit trustee, 659, 662.

husband of *c. q. t.*, 41.

husband should not be, of own marriage settlement, 41.

infant ought not to be appointed, 37 *et seq.*

relative ought not to be appointed, 41.

widow of, anciently entitled to dower, 8.

woman, not desirable as a trustee, 34, 37.

but Court will sometimes appoint her, 37.

**TRUSTEE ACTS** (10 & 11 Vict. c. 96; 15 & 16 Vict. c. 55).

absent trustees, who are, 1016 note (d).

absolutely entitled, meaning of, 1022 note (e).

vesting property in person who is, 1014 note (b), 1018 note (a), 1021 note (a).

action, Court may direct institution of (s. 53), 1038.

administration, when next of kin declines to take out, 1023 note (e), 1037 note (c).

Bank of England bound by orders under (ss. 20, 26; Extension Act, s. 6), 1020, 1024, 1043.

bankrupt trustee, removal of, 1028 note (a).

chambers, proceedings when to be taken in, 1027 note, 1030 note, 1034 note (c), 1035 note (a).

charities, jurisdiction of Court in respect of, under s. 45, 1035.

appointment of new trustees of, 1030.

**chose in action**, direction of Court as to (s. 31), 1027.

vesting order respecting (ss. 5, 6, 22, 23, 24, 35), 1014 *et seq.*

colonies extend to lands in (ss. 54, 56), 1039.

company bound by orders under (ss. 20, 26; Extension Act, s. 6), 1020, 1024, 1043.

constructive trusts, extend to, 1011.

who are constructive trustees within the Acts, 1011 note (c), 1026 note (e).

[The paging refers to the [\*] pages.]

# TRUSTEE ACTS—*continued*.

- contingent rights of trustee or mortgagee, power of Court to discharge, (ss. 4, 8, 11, 12, 16, 18, 29), 1014 *et seq.*
- conveyance** under, appointment of person to execute (s. 20), 1020.
  - copyholds, as to (s. 28), 1025.
  - decree directing, makes legal owner trustee, 1026.
  - form of conveyance, 1020 note (b).
  - lease, on refusal to execute, 1026 note (c).
  - legal estate, of, gives sufficient title when all parties before the Court, 1010 note (c).
  - solicitor of vendor refusing to convey, by, 1012 note (c).
- copyholds, vesting order as to (s. 28), 1024, 1025.
- costs** under (s. 51), 1037.
  - higher scale, on, 1037 note (b).
  - infant trustee, of, 1037 note (b).
  - lunatic mortgagee or trustee, of, 1037 note (b).
  - sale for payment of, vesting order in aid of (Extension Act, s. 1), 1025 note (c), 1040 *et seq.*
- County Courts, jurisdiction of, in proceedings under, 1045.
- Crown, private estates of, extended to, by 25 & 26 Vict. c. 37, 1013 note (a).
  - sale of estate of, extended to, by Intestates Estates Act, 1040 note (a).
  - service of proceedings on, when necessary, 1019 note (b), 1031 note (d).
- decree of Court, when it makes legal owner trustee within, 1025, 1026.
  - exchange, specific performance, partition, conveyance or assignment, for, 1026.
  - sale, for, 1025, 1040.
- disentail of infant's estate under, 1010 note (d), 1016 note (d).
- disputed question of title, Court cannot decide, 1009 note (a).
- dividends accrued or to accrue subsequently to date of request for payment, 1023 note (b).
  - apportionment of, not made, 1014 note (f).
  - severance of, from capital, 1022 note (a).
  - vesting right to receive, 1014 note (f), 1022 note (a). See **Stock**, *infra*.
- Durham, lands in (s. 21), 1021.
- equities of parties, when bound by order of sale, 1010 note (c).
- exchange, judgment for, makes legal owner trustee within Acts, 1026.
- executor is trustee within Acts, 1012.
  - mortgagee, of, when entitled to vesting order, 1019 note (b).
  - where stock standing in name of deceased, and executor cannot be found, (s. 25), 1023.
  - or refuses to transfer (Extension Act, s. 5), 1042.
- executrix, husband of, is trustee within Act, 1021 note (e).
- existing trustee, where none, Court may appoint new trustees (Extension Act, sect. 9), 1044.
- foreclosure decree, vesting order to give effect to, 1016 note (e), 1026 note (e).
- infant trustee or mortgagee**, power of Court to vest lands of (ss. 7, 8), 1015, 1016.
  - jurisdiction, out of, 1021 note (d).
  - new trustee appointed in place of, 1027 note (c).
  - payment of money of, into Court (s. 48), 1036.
  - stock of (Extension Act, s. 3), 1041, 1042.
  - unsound mind, where he is of, 1015 note (c), 1020 note (a).
- Ireland, powers of, extended to lands in (ss. 55, 56, 57), 1039.
- judgment for conveyance, exchange, partitions, sale, specific performance, makes legal owner trustee within (ss. 29, 30), 1025, 1026.
- jurisdiction, trustee out of** (ss. 9, 10, 11, 12, 22), 1016 *et seq.*

[The paging refers to the [\*] pages.]

**TRUSTEE ACTS**—*continued*.

infant or lunatic trustee out of, 1021 note (d).  
 mortgagee out of (s. 19), 1019.  
 person out of, will not be appointed trustee, 1030.  
 personal representative out of (s. 25), 1023.  
 service of petition out of, 1034 note.  
 temporary absence out of, not within the Act, 1016 note (b).

**Lancaster**, lands in county palatine of (s. 21), 1021.

**lord of manor**, consent of, when necessary, 1025.

**lunacy**, administration of trust in, refused, 1014 note (e).

jurisdiction of Lords Justices in, 1013 note (e), 1039 note (b).

proceedings, when to be in lunacy and when in chancery, 1013 note (e), 1015 note (c), 1029, 1030.

**lunatic**, appointment of new trustee in place of, 1028 note (c).

committee of, when to be served with proceedings, 1033 note (c).

jurisdiction, out of, 1020 note (d).

personal representative, power to make vesting order as to property of (s. 6), 1015.

trustee or mortgagee (ss. 3, 4, 5), 1013, 1014.

vesting order of property of, jurisdiction to make, 1026, 1034 note (c).

**married woman** trustee, husband of, is trustee within the Acts, 1012 note (c), 1015 note (b).

**mortgagee**, vesting order in case of infant or lunatic (ss. 4, 5, 7, 8, 19), 1014 *et seq.*

where mortgagee refuse to concur in transfer, 1016 note (e).

**motion**, order under sect. 4 of Extension Act may be made upon, 1042.

**new trustees**, appointment of (s. 32; Extension Act, ss. 8, 9), 853, 1027, 1028, 1043, 1044. See **NEW TRUSTEES**.

consent of, to act, 1030 note.

costs of application for, 1038 note.

creditor's deed, of, 1030 note.

expedient, when deemed, by Court, 1027 note (c).

finer on admission of, to copyholds, 1025 note (a).

fitness of, evidence of, required, 1021 note (f), 1028 note (b), 1030, 1031.

**lunatic**, in place of, 1013 note (a), 1028 note (b).

number of, to be appointed, 1029, 1030 notes.

old trustees not to be discharged from liability (s. 36), 1032.

re-appointment of, for purpose of making vesting order, 1028 note (b).

separate shares, of, 1030 note.

vesting order, power of Court to make (ss. 34, 35), 1031.

where no existing trustee, 1029 note, 1044.

where no new trustee can be found, 671.

number of trustees appointed by Court, 1029, 1030 notes.

**orders** made under, by Court, allegations in, are evidence (s. 44), 1035.

**original trustee**, where none, Court may appoint, 1029, 1044.

**partition**, judgment for, makes legal owner a trustee within, 1026.

**petition under**,

amendment of, 1033 note (a).

costs of (s. 51), 1037.

evidence in support of, 1021 note (f), 1028 note (b), 1030, 1031, 1033 notes.

**new trustees**, for appointment of, 1030 note.

parties entitled to present (ss. 37, 40), 1032, 1033.

service of, 1033 note (c); on Crown, 1019 note (b); on lord of manor, 1025 note (a).

on person out of jurisdiction, 1034 note.

**title of**, when to be intituled both in Chancery and Lunacy, 1013 note (e); 1014 note (e), 1029 note (c).



[The paging refers to the [\*] pages.]

**TRUSTEE ACTS—continued.**

- refusing trustee, powers of Court to make vesting order in case of (ss. 23, 24, 25; Extension Act, ss. 2, 4, 5), 1022 *et seq.*, 1041 *et seq.*
- service on, 1033 note (c).
- removal of trustee, 853, 1028 note (a), 1038 note (b).
- rent charges pass by terms hereditaments, 1010 note (a).
- sale, order for, binds equitable interests, 1010 note (c).
- makes legal owner trustee within Acts, 1025, 1040.
- Scotland, Trustee Act does not extend to (ss. 54, 56), 1039.
- service of proceedings under, 1033 note (c).
- ship, shares in, are within the Acts, 1010 note (b).
- sole trustee, meaning of, 1022 note (d).
- out of jurisdiction, power to vest property of (ss. 9, 11, 22), 1016, 1017, 1021.
- specific performance, decree for, makes legal owner trustee (s. 30), 1026.
- stamp duty, conveyances by vesting order subject to, 1045.
- stock**, bank officer, direction to, to transfer, 1021 note (b).
- but only in place of person incapacitated, *ib.*
- direction of Court respecting (s. 31), 1027.
- dividends, right to receive, may be vested without disturbing capital, 1022, note (a).
- meaning of term, 1010.
- shares included under designation of, 1010 note (b).
- vesting order as to (ss. 5, 6, 22, 23, 24, 25, 26, 35; Extension Acts, ss. 3, 4, 5), 1014 *et seq.*, 1041, 1042.
- Court may vest right to stock or to call for transfer, 1043 note (b).
- suit, Court may direct institution of (s. 53), 1038.
- surviving trustee or mortgagee, uncertainty as to, powers of Court in case of (ss. 13, 14, 19), 1018 *et seq.*
- title**, Court cannot decide disputed question of, 1009 note (a).
- title of Act** (s. 58), 1039.
- trustee**, appointment of, 1027, 1028. See *supra*, **new trustees**.
- who is, within the Act, 1011 note (c).
- Trustee Relief Act**, payment into Court under, may be directed, 1027.
- unborn person**, meaning of term, 1027 note (a).
- interested in action, may be declared trustees (s. 30), 1027.
- power of Court to discharge contingent rights of (s. 16), 1018.
- unsound mind**, Court may direct commission concerning person of (s. 52), 1038.
- power to make vesting orders as to property of person of, 1013 *et seq.*
- where trustee out of jurisdiction, 1016 note (f).
- where unsoundness of mind contested, 1013 note (b), 1028 note (a), 1038 note (b).
- payment of money of person of, into Court (s. 48) 1036.
- vendor**, when a constructive trustee within the Acts, 1011, 1012 note (e).
- vesting order—**
  - breach of trust, lending sanction to, will not be made, 1032 note (a).
  - chambers, when obtainable at, 1027 note, 1034 note (c), 1035 note (a).
  - charge, subject to, 1015 note (e).
  - charity, as to property of, 1030, 1035.
  - chose in action*, as to, effect of (s. 27), 1024.
  - conveyance, takes effect as, 1014 note (a).
  - copyholds, as to (s. 28), 1011 note (c), 1024, 1025.
  - dower, to uses to bar, 1015 note (e).
  - equitable estate, as to, not required under order for sale, 1010 note (c).
  - estate tail, barring, 1010 note (d), 1013 note (e), 1016 note (a).
  - foreclosure, in aid of judgment for, 1016, note (e), 1026 note (e).
  - form of, description of property, 1014 note (a).

[The paging refers to the [\*] pages.]

# TRUSTEE ACTS—*continued.*

in case of death of sole surviving trustee intestate, 222 note (b).  
 Ireland, as to lands in, 1039 note (a).  
 Ireland, joint tenants in, 1017 note (c), 1031 note (e).  
 judgment or decree of Court, in aid of, 1025, 1026, 1040.  
 leaseholds for years, as to, 1018, note (a), 1026 note (c), 1031 note (d).  
 lunatic, of property of, 1026, 1034 note (c). See *supra* lunatic.  
 married woman executrix, in, 1015 (e).  
 new trustees, on appointment of (s. 34), 1031.  
 power of appointment, as to, 1013 note (e).  
 reconveyance, in lieu of (s. 19), 1019.  
 rent charges, as to, how to be framed, 1010.  
 sale, in aid of decree for, 1041.  
 service of petition for, 1033 note (c).  
 several orders, when Court will make, 1014 note (a).  
 stamp duty, is subject to, 1045.  
 stock, as to (ss. 5, 6, 22, 23, 24, 25, 26, 35; Extension Act, ss. 3, 4, 5),  
 1014 *et seq.*, 1041, 1042. See *supra*, stock.

# TRUSTEE RELIEF ACTS (10 & 11 Vict. c. 96, 12 & 13 Vict. c. 74.)

abroad, persons resident service, &c. on, 1001, 1006.  
 time given to, 1001.  
 account, heading of, to which fund to be paid in, 998 note (b).  
     separate shares should be carried over to, 1000, 1001.  
 action, when Court will direct parties to bring, 1002.  
 affidavit by trustees, 360.  
     form and contents of, 997 note (b), 1005.  
     schedule to be annexed to, 1005.  
 applications under, how to be made, 1006. And see *infra* petition.  
 chambers, when proceedings may be taken at, 1000.  
     liberty to apply at, as to shares carried over, given, 1001.  
 charge, owner of estate subject to, not trustee within, 996.  
 charity, trustees for, entitled to pay into Court under, 997.  
 Charity Commissioners, consent of, whether necessary to proceedings under,  
 932, 997.  
*chose in action*, payment of, into Court under 36 & 37 Vict. c. 66, 997.  
 costs of proceedings under, 1002 *et seq.*  
     appeal for, whether allowed, 1003.  
     corpus or income, whether payable out of, 1003, 1004.  
     deduction by trustees of costs of payment into Court, 999, 1003.  
     different fund, Court cannot order payment of costs out of, 1003.  
     disclaiming party, of, 1004.  
     insurance company entitled to, as between solicitor and client, 997.  
     subsequent incumbrancer, of 1004.  
     taxation of, costs of taking copies of affidavits not allowed in, 1003.  
     tender of, to party whose appearance is unnecessary, 1002, 1004.  
     trustee when entitled to, 1002; when refused or ordered to pay, 350,  
     1002, 1003.  
 County Courts, jurisdiction of, 998 note (c), 1008.  
     payment or transfer to, how to be made, 1008.  
 declaration of rights Court will make, 1000, 1001.  
 deed, Court may decide as to validity of, 1001 note (b), 1002.  
 discharge by payment into Court under, 997 note (a).  
 equity to settlement, whether trustee may pay fund subject to, into Court,  
 1002.  
 executor paying money into Court and afterwards discovering debts, 998.  
     costs of, how payable, 1003.  
 foreign government bonds of, not within Act, 998 note (d).  
 indemnity to trustee, when order operates as, 996.

[The paging refers to the [\*] pages.]

**TRUSTEE RELIEF ACTS—***continued.*

- trustee cannot require fund to be kept as, 999.
- infant, appointment of *guardian ad litem* to, 1000.
- order for maintenance constitutes infant ward of Court, 1002.
- inquiry or issue, when Court will direct, 999, 1000, 1001, 1002.
- procedure in such case, 1001.
- insurance company, payment into Court of policy monies by, 997.
- investment under, in New Three per Cent. Annuities, 999 note (c).
- in Indian railway shares, 999 note (c).
- by Paymaster, without request or order, 1005.
- lunatic, application of money of, 997.
- foreign, dividends only paid to curator of, 999.
- maintenance, jurisdiction of Court to make or for, 997, 1002.
- majority of trustees, payment into Court by, 361, 997, 1007.
- notice of payment in, to be given to persons mentioned in affidavit, 998, 1005.
- of proceedings, to whom to be given, 1006.
- motion, application under Act cannot be by, 1000.
- order made upon petition under, has same effect as if made in suit, 361.
- pauperis in formâ*, claimant may proceed, 1000
- payment into Court under—**
  - costs of, 999, 1003.
  - how effected, 360, 998.
  - instalments, of money payable by, 996.
  - majority of trustees, by, 361, 997, 1007.
  - retirement of trustee, operates as, 999 note (a)
  - Trustee Act, may be directed under powers of, 1027.
  - trustee neglecting to make, when liable for costs, 350, 1002.
  - trustee not bound to pay into Court, 997 note (a)
  - when justifiable, 345.
  - whole fund, trustee should pay in 999 note (a).
- payment out of Court under, 361, 1000, 1006.**
  - income, of, to successive tenants for life, 999, 1000.
- petition under, 361, 1000, 1006.**
  - amendment of, 1000.
  - form of, 1000.
  - person not named in affidavit, by, 998.
  - share, aliquot, by person entitled to, 1000.
  - summons in lieu of, where fund under £1000, 1000.
  - title of, 1006.
  - trustees themselves may present, 1000.
- procedure under, should not be adopted, where action or summons less expensive, 350, 351.**
- Public Works Loans Act, 1875, payment into Court under, 997.**
- purchaser whether entitled to pay money into Court under, 996.**
- remainderman, service on, when necessary, 1001, 1004.**
- service of proceedings under, 1000, 1001, 1004, 1007.**
  - jurisdiction, out of, 1001, 1006.
  - place for, to be named in petition, 1006.
  - substituted service, 1001.
- settlement, impeachment of, upon petition, 1002.**
- stop order, petition for, when proper, 1000.**
- summons, application when to be made by, 1000, 1006.**
- tenant for life, costs of petition by, 1004.**
  - order for payment of income to, in succession, 999, 1000.
- transfer into Court, of what securities permitted, 998, 1007.**
  - surviving trustee, by, 999.
- trustee at liberty to pay in, but not bound to, 997.**

[The paging refers to the (\*) pages.]

TURNER'S ACT (13 & 14 Vict. cap. 35), 352, 356.

ULTRA VIRES.

borrowing by directors in excess of powers, effect of, 595.

UNBORN PERSON.

power of Court to deal with interest of, 1018, 1027. See TRUSTEE ACTS.

UNCERTAINTY.

implied trust not raised where it exists, 132.

unless the uncertainty arises from want of evidence of whole intention of testator, 133.

"missionary purposes," trust for, is void, 148 note (f).

object of trust, of, 133.

resulting trust, where existence of a trust clear but objects uncertain, 133, 142.

subject matter of trust, of, 134.

UNCLAIMED DIVIDENDS, 525.

UNDERLEASE.

finer on granting, tenant for life when entitled to, 371.

title on sale of, deduction of, 439.

UNDERTAKING.

title deeds, for safe custody of, 444.

UNDERVALUE.

lease of charity lands set aside on ground of, 543.

compensation in such case, by whom to be paid, 544.

sale by trustee or executor at grossly inadequate value, 424, 479.

UNDERWOOD treated as income, 682.

UNDIVIDED SHARES.

mortgage of, for raising portions, 421.

trustee of, may concur in sale of entirety, 594.

UNDUE INFLUENCE. See FRAUD.

release, &c. procured by, is invalid, 919, 926.

UNFITNESS.

of trustees, 658, 847.

foreign domicile when a ground of, 40, 658.

UNITED STATES.

investment in securities of, whether authorized by the Court, 321.

stock of, comes within description of foreign funds, 321.

UNIVERSITIES.

exemption of, from Charitable Trusts Acts, 548, 549.

UNLAWFUL TRUST. Chap. VII. sect. 2, 94-107.

accumulation, trust for, void if leading to perpetuity, 89, 97,

when void under Thellusson Act, 90 *et seq.* See THELLUSSON ACT.

alien, for, 95. See ALIEN.

alienation, restraint against, 98, 99.

charity, for, 96. See CHARITY.

consequences of creating, 105 *et seq.*

property may be recovered by person claiming under settlor, 106.

unless he be party to fraud; *ibid.*

or by settlor himself when trust fails, *ibid.*

where trust partly lawful, partly unlawful, 106, 107, and note (a).

Court will not enforce, 105.

devisee engaging to hold upon, not permitted to profit by wrong, 63.

but his mere intention to execute the trust will not avoid the devise, 63.

where engagement is as to indefinite part of estate, 64.

where no trust actually declared, 64.

illegitimate children, trust for future, 95.

[The paging refers to the [\*] pages.]

# UNLAWFUL TRUST—*continued*.

- immorality, 105.
- income tax, for payment of, 105.
- insurances for life, 105.
- joint tenants, devise to, procured by fraud of one, 63.
- meaning of term explained, 19, 20.
- Mortmain Act, trust unlawful under provisions of, 96, 97. See CHARITY.
- perpetuity, rule against, application of, to trusts, 89, 97.
- restraint against alienation, trust imposing, 98, 99.
- secret trust for charity, 63, or other unlawful purpose, 63, 64.
- devisee must discover what the secret trust was, 64.
- simony, 104.
- splitting votes, 105.
- superstitious purposes, 105.
- tenants in common, devise to, may be good as to one and void as to another, 63.

# UNSOUND MIND.

- person of, power of Court to deal with interest of, 1013 *et seq.*, 1026, 1027, 1036. See TRUSTEE ACTS.

# USAGE.

- how far evidence in construction of religious trust, 533.

# USE.

- averrable, 52; but not where deed is required to pass estate, 52.
- cestui que use empowered to pass legal estate by Stat. 1 Ric. 3. c. 1, 4, 5.
- charitable, 54. See CHARITY.
- copyholds in surrender of, not within Statute of Frauds, 58 note (c).
- Crown, declaration of use by, must be by letters patent, 52.
- definition of, 2.
- devises to uses, when legal estate passes to trustees under, 219.
- disclaimer of, 199.
- estate on which it might be declared, 5; whether on a feoffment in tail, 5, 6 note (1).
- whether upon an estate for life, 5 note (1), 6 note (1).
- executed, is, under under statute, whether designated as trust or use, 209.
- foreign real estate, cannot be engrafted upon, 49.
- land, use, and trust, distinguished, 7.
- origin of, 1.
- parol, when it might be declared by, 52.
- was devisable by, before Statute of Wills, 720.
- possession distinct from, 7.
- powers before Statute of Uses, 611 note (1).
- shifting of fee simple by, allowed, 84.
- upon a use not executed by Statute of Uses, 7, 209.
- but execution enforced under name of trust, 7, 209.

# USES, STATUTE OF.

- conveyance under, on appointment of new trustees, 651.
- effect of, stated, 6, 209.
- powers anterior to, summary of law as to, 611 note (1).
- special trusts and trusts of chattels not within, 6, 210. See SPECIAL TRUST.

# USUAL POWERS.

- what powers authorized by these words, 127 *et seq.*
- how qualified by context, 128, 129.

# VAGUE TRUST.

- charity, for, 107.
- younger children, for, 117.

[The paging refers to the [\*] pages.]

# VALUATION.

duty of trustees to make, on lending money on real security, 324, 325.  
prior to sale of trust property, 424; or purchase under trust, 499, 500.

# VALUE. See CONSIDERATION; INVESTMENT.

# VARY.

- rights of *c. q. t.*, trustee cannot, 938, 939, 963.
- securities, power to vary, effect of, 318, 323.
- exercise of, by trustees, how to be made, 318, 323.
- implied in power of investment, 460.
- power to give receipts implied by, 460.

# VENDOR. See SALE; PURCHASE.

- accountable to purchaser for rent, &c., unhusbandlike farming, wilful waste or neglect, 141.
- incumbrances, not bound to answer inquiry of purchaser as to, 459 note (a).
- judgment against, after contract to sell, 797 *et seq.*
- lien of, 714.
- personal representative of, empowered to convey, 1011.
- refusal by, to convey, 1012.
- trustee *sub modo* for purchaser, vendor is, 141, 142, 233.
- within Trustee Acts, when he is, 1011, 1012.

# VENDOR AND PURCHASER ACT, 1874, 438.

contract for sale or purchase, stipulations implied in, 500.

# VESTING ESTATE.

in new trustees, 650 *et seq.*, 1014 *et seq.*, 1032. See NEW TRUSTEES.

# VESTING OF PORTIONS, 394 *et seq.* See PORTION.

# VESTING ORDER, 1013 *et seq.* See TRUSTEE ACTS.

# VISITOR.

- Court does not interfere with jurisdiction of, 528, 851.
- Crown is, in civil corporations, through Queen's Bench Division, 530 note (b).
- may be, in eleemosynary corporations, by terms of foundation, or where heir of founder unknown or lunatic, 530.
- visitatorial power of, in such case is committed to Lord Chancellor, 530.
- founder of charity is, by common right, 528.
- gift to charity, whether subject to visitatorial power, 529.
- office of, 528.
- he must follow the statutes of the founder, 528.
- his decision is final, 528.

# VOIDABLE. See INFANT; LUNATIC; VOLUNTARY SETTLEMENT.

# VOID DEED.

trustee of, cannot charge for expenses, but may for improvements, 640.

# VOLUNTARY.

- agreement, Court will not enforce specific performance of, though under seal, 80, 81.
- how far provable in equity as a debt, 81 note.
- bond creates a debt, 81 note.
- covenant, 81 note. See COVENANT.
- promissory note, original payee cannot recover upon, against the maker, 81 note.
- accompanied with deposit of deeds, 81 note.

# VOLUNTARY SETTLEMENT.

- Bankruptcy Act, 1883, when avoided under, 80.
- chattels personal, of, not within 27 Eliz. c. 4, 77.
- consideration, any, however slight, prevents settlement being voluntary, 76.
- and may be proved by extrinsic evidence, 78.

[The paging refers to the [\*] pages.]

**VOLUNTARY SETTLEMENT**—*continued.*

- costs of action to set aside, 989, 990.
- covenant to settle future property when void under Bankruptcy Act, 1883, 78.
- covenant, voluntary, when debt is created by, 80, 81 note.
- creditors**, when invalid as against, under 13 Eliz. c. 5, 77 *et seq.*, 518.
  - insolvency of settlor, 77.
  - not invalid if settlor was solvent at time of making it, 78.
  - unless there was fraud, 78.
  - subsequent creditors, how far void as against, 79.
- delay, when a bar to right to set aside, 79.
- donee under, incurring expense, not a volunteer but may call for conveyance, 75.
- effectual, if sealed and delivered, although retained by settlor, 74, 75.
- equitable property, of, where settlor declares himself trustee, trust is perfectly created, 67.
  - where settlor appoints stranger trustee, assignment to new trustee sufficient, 72.
  - and good against assignor without notice to former trustee, 701, 702.
  - when new trust created without new trustee, 73.
- expectancy, of, 74.
- fraud or mistake a ground for avoiding, 75.
- gift, every person *sui juris* can make a, 71.
- lands or chattels real, of, defeasible by subsequent sale by settlor, 75, 76.
  - but not by settlor's heir or devisee, 76.
  - cestui que trust cannot prevent sale or obtain redress, 76.
  - settlor cannot enforce contract for sale against purchaser, but purchaser may against him, 76.
  - judgment against settlor not binding on, 803 note (i).
- leaseholds, assignment of, is not voluntary, 75 note (i).
- legal property, where settlor declares himself trustee of, trust is perfectly created, 67.
  - where settlor appoints stranger trustee, transfer necessary if possible, *ex. gr.*, land, chattels, stock, 70.
  - where legal property incapable of legal transfer, 70, 71.
- meritorious consideration, agreement founded on, not enforced against settlor, 81.
  - how far, as against parties claiming under him, 81.
  - semble*, cannot be, even as against volunteers so claiming, 82.
- mortgagee, sale by, does not defeat settlement as to surplus proceeds of sale, 76, 77.
- notice of, not necessary, 74, 702, 708.
- policy of assurance, of, by letter to trustees of settlement, 71.
- revocable by settlor, is not, 75.
- specific performance of, not enforced in equity, 80; *secus* where grantee lays out money on strength of it, 75.
- stock, &c., of, is within 13 Eliz. c. 5, 80.
- subsequent acts and deeds, may acquire validity by, 77.
- trust supported if perfectly created, 67.
  - not perfectly created when further act intended, 67, 71.
  - distinction between voluntary assignment of expectancy and interest, 74.
  - no trust unless intention to create it, 69.

**VOLUNTARY TRUST.**

- enforced by Court, when, 69.
  - where property is a legal interest, 69, 70.
  - legal interest incapable of transfer, 70 *et seq.*

[The paging refers to the [\*] pages.]

# **VOLUNTEER.**

assign of trust estate presumed to have notice, 16, 187, 246, 708, 857.  
equity will not constitute a trust for a, 70.  
rents and profits, account of, decreed against, 888.  
time no bar to express trust in favour of a, 876.  
as to constructive trust, 877.  
trust estate followed into hands of, 857.

# **VOTE.**

coroner, for, right to, 234, 235, 681.  
member of Parliament, trustee cannot vote for, 235, 681.  
purchase for purpose of giving, 167, 168; does not raise resulting trust, 167.  
unqualified candidate, for, thrown away, 539.

# **VOUCHERS.**

cestui que trust may inspect, but must pay for copies of, 449.  
trustees entitled to custody of, 449.

# **WAIVER.**

breach of trust, remedy for, not waived by *c. q. t.* receiving satisfaction in part, 923.  
consideration for, 925.  
lien, of, by proof in bankruptcy, 912.  
married woman, by, of her equity to a settlement, 741, 742.  
meaning of term, 925.  
trustee, by, of notice under Settled Land Acts, 558, 559.

# **WARD. See GUARDIAN; INFANT.**

# **WASTE, 187 *et seq.***

account in respect of, 188.  
right to, barred by laches, 872.  
collusion by owner of first vested estate of inheritance, 189.  
contingent remainders, trustee to preserve, is bound to prevent waste, 41, 383.  
equitable, 188; now made legal waste, 190.  
executory trust, tenant for life under, when to be made dispunishable for waste, 507, 508.  
infant, trustees for, must not commit, 579.  
interest on proceeds of, when and from what time charged, 188 note (*f*), 578.  
limitations, statute of, begins to run from time of waste committed, 189.  
period of limitation under, 189.  
mines, by opening, 190, 682.  
permissive, by equitable tenant for life, 574; by legal, *ib.*  
Settled Land Act, 1882, powers of tenant for life under, 190. See SETTLED LAND ACTS.  
tenant for life without impeachment of waste, trustee should not purchase timbered estate in his favour, 502.  
timber felled, who entitled to, 188 *et seq.* See TIMBER.  
trustee for purchasing, should frame conveyance with reference to, 507.  
underwoods and thinnings treated as income, 682.

# **WASTING PROPERTY.**

duty of trustee to convert, when given to persons in succession, 298 *et seq.*  
unless intention shown to give right of enjoyment in specie, 299, 300.

# **WEST INDIES.**

equities relating to estate in, enforced here, 48.  
mortgagees of estates in, compensation allowed to, 632.  
trustees of estates in, whether entitled to commission, 628.

# **WESTMINSTER, STATUTE OF, 795.**

# **WIFE. See MARRIED WOMAN.**



[The paging refers to the [\*] pages.]

## WILFUL DEFAULT.

- account on footing of, when directed, 904 *et seq.*
- not on further directions, 905.
- nor on common administration order at chambers, 905.

## WILL.

- ademption of legacy by subsequent advance by parent, 401.
- alien, of, 27 note (b).
- ambulatory till testator's death, 58.
- attesting witness, trustee of legacy may be, 275 note (c).
- Bank of England, need not now be entered or registered at, 32.
- chattels personal, life estate in, cannot be conferred by will at common law, 85; *secus*, in equity, 85.
- codicil republishing will, effect of, 405.
  - revocation of appointment of "trustee" or "executor" by, 215.
- consideration, it implies, 130.
- conversion confined to purposes of, 150, 953.
  - doctrine of, 939 *et seq.* See CONVERSION.
- copyholds, of, 53 note (c), 721.
  - of equitable estate in, 721, 722.
  - where no custom to devise legal estate, 722.
  - under late Wills Act, 722.
- customary freeholds, of, 721, 722.
- declaration of trust of property comprised in, 58.
- deed may operate as part of, 58 note (b).
  - but if of personal estate should be proved as will, *ib.*
- devise to trustee when to be construed to pass fee simple, 220.
- equitable estate, creation of, by will, 58.
  - devise of, by will, 720.
- executory trust in, construction of, 117 *et seq.* See EXECUTORY TRUST.
- formalities requisite to execution of, 57, 720, 962.
  - must be observed as regards equitable as well as legal interest, 58, 720.
- fraud by heir, devisee, legatee, trusteeship arising by, 61, 62, 63.
- freeholds, of, under Statute of Frauds, 57.
  - of equitable estate in, 720, 721.
  - under late Wills Act, 722.
- "heir male," construction of, 118.
- "heirs," fee simple passing without use of word, 109, 213. See HEIRS.
- incorporation of other documents in, 59, 60.
- infant of fourteen might formerly make, of personal estate, *secus* now, 25.
- joint tenant, devise procured by fraud of, is wholly void, 63.
- land to be converted into money, of, 949.
- legal estate, rules for determining quantum of, to be taken by trustee, 213 *et seq.*
- married woman, of, as to separate estate, 751, 753, 774.
  - under power, 919 *et seq.*, 949.
- money to be laid out in land, of, 940, 941, 962.
- notice of, purchaser not affected by, 478.
- nuncupative, of copyholds, 53 note (c).
- personal estate, general gift of, what property passes under, 159, 160.
  - will of, under Statute of Frauds, 57.
  - under late Wills Act, 57.
- power to appoint by, contemplates those who answer description at death of donee, 133, 134, 839.
- residuary devise, effect of, 155, 156, 158, 159.
- resulting trust, where devise made trustee by will but no trust declared, 59, 60,
  - where trust declared by parol, 722.
- revocation of, whether effected by dealing with equitable estate, 722.

[The paging refers to the [\*] pages.]

**WILL**—*continued*.

- or with legal estate, 722.
- secret trust, parol evidence of, when admissible, 62.
  - trust must be communicated to trustee in testator's lifetime, and he must accept that particular trust, 62.
  - where trust unlawful, resulting trust arises for heir at law, 63.
- sovereign of, 22.
- Statutes of Wills, Chap. v., sec. 3, 57—66.
- stock, of, how formerly made, 32 note (b).
- tenants in common, devise to, may be good as to one and void as to another, 63.
- testamentary expenses, what are, 644.
- transfer of stock on production of probate of, 32.
- trusts cannot be created without formalities requisite to legal devises or bequests, 58.
  - therefore trust cannot be declared of property comprised in, except by testamentary instrument, 58; *secus*, in case of fraud, 61.
  - testamentary disposition distinguished from declaration of trust, 58.
- parol evidence, admission and rejection of, as against title of executors, 60.
- unlawful trust, secret engagement by legatee to execute, 63.
  - devise not void simply because devisee means to execute, 63.
- use, devise of, 720.
- uses, devise to, construction of, 219.

**"WILLING AND DESIRING."**

- may create a trust, 131.

**WILLS, STATUTES OF**, Chap. v. sect. 3, 57—61.

- devise to uses, construction of, 219.
- trusts cannot be created by devise or bequest without formalities required for wills, 58, 59.
  - as to personal estate, 60.
  - except in cases of fraud, 61.

**WINDFALLS.**

- who entitled to, 189 note (b), 966.

**"WISHING AND DESIRING."**

- may create a trust, 131.

**"WISHING AND REQUESTING."**

- may create a trust, 131.

**WOMAN.**

- married. See **MARRIED WOMAN**.

**WOODED ESTATE**, 502. See **TIMBER**.

**WORDS.**

- "absolutely entitled," 447, 1022.
- "acting" trustee, 655.
- "after death of A." 430.
- "alienation," 102, 103.
- "approved securities," 326.
- "assign," 231 *et seq.*, 603.
- "at home," where property is, 949, 950.
- "authorizing and empowering," 131.
- "beseeching," 131.
- "chapel," 531.
- "chiefest and discreetest," 87.
- "children," 843.
- confidence, words of, may raise a trust, 131.
- "continuance of the trust," 605.

[The paging refers to the [\*] pages.]

WORDS—*continued*.

- "continuing" trustee, 658, 664.
- "convenient speed," 289, 424.
- "convey, conveyance," 1010.
- "declining" to act, 656.
- "desire," trust created by, 131, 641.
- "desirous of being discharged," 999.
- "executors," 603, 604, 656, 657.
- "finding a master," trust for, 537, 538.
- "free grammar school, free school," 536.
- "funds," 322.
- "government or good securities," 334.
- "grant," 441, 687.
- "heir female," 114.
- "heir male," 118.
- "heirs," 109, 213, 233, 601, 602. See HEIRS.
- "heirs of the body," 114, 115, 118, 120. See HEIRS OF THE BODY.
- "incapable," 658.
- "issue," 114.
- "it shall be lawful," 365.
- "lands," 721, 941, 1010.
- maintenance, what words create trust for, 137, 138.
- "master," finding a, 537.
- "next of kin," 844.
- "other trustees," 665.
- "parishioners," 86 *et seq.*, 539.
- "party by law enabled to declare trust," 57.
- "pay" or "permit to receive," 211, 212, 216.
- "poor relations," 836, 837, 842, 843.
- "poor, relief of," 531, 538.
- "promotion of godly learning," 533
- "proper entail on heir male," 118.
- "proper" powers, 128, 129.
- "provide suitably," 117.
- "ratepayers," 88.
- "real security," 327.
- "recommend," 131.
- "refuse," 647, 656.
- "relations," 842 *et seq.*
- "rents and profits," 366, 367, 369, 419, 420.
- "request," 948.
- "require," 317, 328, 614.
- "residuary executor," 159.
- "residue," 155, 156, 158, 159.
- "respective," 602.
- "retiring" trustee, 999.
- "said trustees," 665.
- "securities" for money, 228.
- separate use, implying, 755, 756.
- "shall and may," in Act of Parliament, 262 note (h).
- "sole," 756.
- "strict entail," 120.
- "subject thereto," 154, 155.
- supplied in marriage articles, 117.
- "survivor," "surviving trustee," 604, 655 *et seq.*, 662, 664.
- "testamentary" expenses, 644.
- "true owner," 244, 245.
- "trust" in Trustee Act, 1850—1011.

[The paging refers to the [\*] pages.]

**WORDS—continued.**

- "trust" or "trustee" do not necessarily exclude a beneficial gift, 148, 149.
- "trustee," "trustee of inheritance," 215.
- "trustee for time being," 604.
- "unfit," 658.
- "usual powers," 127, 128.
- "wish," 131.
- "worship of God," 533.

**WORSHIP OF GOD.**

- construction of trust for maintaining, 533.

**WRITE.**

- distringas, of, 970 *et seq.* See **DISTRINGAS.**
- execution of, at common law, 794 *et seq.*
- under recent Act, 27 & 28 Vict. c. 112, 812, 813.
- extent, of, 817.
- ne exeat, of, against trustee, 900.

**WRITING.**

- assignment of equitable interest by, 693.
- chose en action*, now assignable by, 72, 695 note (c), 712, 713.
- married woman can bind separate property without, 764, 765.
- notice of assignment whether to be in, 709, 713.
- request for sale to be testified by, 429.
- trust, when necessary for creation of, 55 *et seq.*
- trustee may sue before accepting trust by, 205.

**WRONGDOER.**

- not to be permitted to profit by his own wrong, 188, 191.

**YEARLY TENANT.**

- limited owner holding under will on yearly tenancy cannot renew for own benefit, 181.

**YORKSHIRE REGISTRIES ACT, 1884.**

- "grant bargain and sell," imply covenants for title, 687.
- official search under, 500, 501.

**YOUNGER CHILDREN.**

- who regarded as, entitled to portions, 386, 388, 392.

**FINIS.**













